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In 1995 the *Review* will contain articles on the following major topics:

- **International Conference of the Red Cross and Red Crescent** (Geneva, December 1995):

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- **Follow-up to the International Conference for the Protection of War Victims** (August-September 1993):
  Meeting of the Intergovernmental Group of Experts for the Protection of War Victims (Geneva, 23-27 January 1995) and its follow-up.

- **Current problems in the field of international humanitarian law:**
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- **Review Conference of the 1980 United Nations Weapons Convention** (September-October 1995).

- **Humanitarian policies and operational activities:**

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- **Thirtieth anniversary of the adoption of the Fundamental Principles of the Red Cross and Red Crescent:**

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- **History of humanitarian ideas:**

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- **History of the Movement**

  ICRC activities during the Cold War and its aftermath (1945-1995); ***the Review's 125th anniversary*** (continuation): milestones in humanitarian law; unity and solidarity within the Movement.

ARTICLES SUBMITTED FOR PUBLICATION IN THE *INTERNATIONAL REVIEW OF THE RED CROSS*

The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and relevance to the topics to be covered during the year.

● Manuscripts will be accepted in *English, French, Spanish, Arabic* or *German.*

Texts should be typed, double-spaced, and no longer than 20 pages (or 4,000 words). Please send diskettes if possible *(Word-perfect 5.1 preferred).*

● Footnotes ***(no more than 30)*** should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.

● Bibliographical references should include at least the following details: (a) for books, the author's initials and surname (in that order), book title (underlined), place of publications, publishers and year of publication (in that order), and page number(s) referred to (p. or pp.); (b) for articles, the author's initials and surname, article title in inverted commas, title of periodical (underlined), place of publication, periodical date, volume and issue number, and page number(s) referred to (p. or pp.). The titles of articles, books and periodicals should be given in the original language of publication.

● The *Review* reserves the right to edit all articles before publication.

● Unpublished manuscripts will not be returned.

● Published works sent to the editor will be mentioned in the list of publications received and, if considered appropriate, reviewed.

● Manuscripts, correspondence and requests for permission to reproduce texts appearing in the *Review* should be addressed to the editor.

Articles, studies, and other signed texts from non-ICRC sources published in the *Review* reflect the views of the author alone and not necessarily those of the ICRC.

IN GENEVA, FROM 4 TO 7 DECEMBER 1995

THE 26th INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT:

MYTH AND REALITY

The long awaited 26th International Conference of the Red Cross and Red Crescent has taken on a virtually mythical dimension within our Movement. It has on occasion been compared to the soldier in the famous book by Dino Buzzati (*Le désert des Tartares*) stationed in a fort waiting for the Tartars, beset by a mixture of hope and apprehension.

Let us take a closer look at both prospects.

I. HOPES PLACED IN THE INTERNATIONAL CONFERENCE

1. Joining forces to help vulnerable people

The extraordinary technical advances and soaring population growth that have characterized our century have made two things very clear: first, mankind has not succeeded in managing these developments for the benefit of humanity as a whole; and second, there are more and more people living in abject poverty, who are in some way vulnerable or excluded from mainstream society, and all of these need assistance and compassion.

The basic mission of the International Red Cross and Red Crescent Movement to assist these vulnerable people, particularly in times of armed conflict and the aftermath of such events, is therefore as vital today as ever.

The greatest hope placed in the Conference is closely bound up with this situation and the primary duty of the Conference itself: to renew, or

rather to relaunch and promote, dialogue between the States and our Movement in order to determine how concerted efforts can best be made to improve the lot of this vast mass of people who lack basic necessities and for whom life is one long vale of tears. We can and we must do more. We can and we must work together more effectively. The Conference represents an opportunity to discuss these matters and to open up new possibilities.

2. Attenuating and preventing crises

Nowadays the international community gives the impression of lurching from one crisis to another as it struggles, with inadequate resources, to patch up ever-widening gaps. Whole nations watch helpless as these crises and their consequences, from which no one is totally safe, run their course. The sad result is that people withdraw into a shell, preferring to ignore what is beyond their ability to control. Compassion is directed toward the short-term, the shocking situations shown in the media, precisely because these situations are shocking and there is a need to feel that one is doing something. Yet all this is to the detriment of those who no longer make the headlines — the forgotten victims — and of long-term planning.

Thus one aim of the Conference is to take up this discussion in more wide-ranging terms, examining what can be done to attenuate the effects of, and if possible prevent, such crises.

(a) Attenuating the effects of crises

More than anything else, there must be increased respect for international humanitarian law during armed conflicts if crises are to be contained.

The meeting of the Intergovernmental Group of Experts, open to every State, which was convened by the Swiss Government in response to a request made in 1993 by the International Conference for the Protection of War Victims, examined this subject in depth. The expert's recommendations will be submitted for approval to the 26th Conference. Some experts would have preferred that the recommendations be more forceful, understandably in as much as certain of today's problems call for an energetic response from the international community.

These recommendations, which lay stress on preventive action and measures to be taken at national level in peacetime (adoption of national

legislation; increased efforts to spread knowledge of humanitarian law, particularly among the armed forces; the setting-up of interministerial commissions, etc.) could nevertheless bring about an appreciable improvement in the situation *provided that they are taken seriously and followed up by tangible action.* The ICRC, especially, in view of its traditional and statutory role in this field, and also the National Societies and the Federation figure prominently in the recommendations. It is essential that they all measure up to the trust placed in them, that they reaffirm their readiness to respond and take advantage of every opportunity that arises. But another — and perhaps the main — challenge is to encourage States to invest energy and resources in these preventive measures. Although they may not be spectacular, if they are taken seriously they are capable of improving the lot of war victims to a considerable degree.[1]

Improved management and greater understanding of humanitarian action should also contribute to alleviating crises; hence the idea of continuing to give thought to the victims' right to humanitarian assistance and the ethical rules to be observed by the humanitarian organizations providing emergency humanitarian aid. In this connection, the code of conduct drawn up by the Federation in conjunction with the ICRC and various non-governmental organizations is to be submitted to the Conference for study, together with the question of security conditions for humanitarian action.

(b) Crisis prevention

Crisis prevention is a much broader field in that it addresses the deep-rooted causes of crises, such as poverty and underdevelopment, uncontrolled population growth, organized crime and corruption.

Our Movement must not overreach itself when attempting to help solve these problems. We do, however, have much to offer, in particular the network of National Societies and the Fundamental Principles.

A network of National Societies covering the entire world (the principle of universality), ready to work for the most vulnerable groups (principle of humanity), without any form of discrimination (principle of impartiality), and without becoming involved in political disputes (prin-

[1] The previous issue of the *Review* (No. 304, January-February 1995, pp. 4-38) gives a detailed account of the meeting of the Intergovernmental Group of Experts and its recommendations.

ciple of neutrality) is precisely what is required to respond to the very real needs of those whose wretched existence is a natural breeding-ground for tension, crises and war.

The mission and role of National Societies vis-à-vis the most vulnerable elements of the population, such as refugees, street children and AIDS sufferers, should be reaffirmed and redefined. The International Conference will also present a unique opportunity to raise awareness of the value of this network, and to enhance cooperation between National Societies and governments. The latter must be made to understand the advantages of supporting the National Societies without encroaching on their independence, without seeking to use them for political purposes, and therefore without undermining their credibility among those they are meant to help.

The Conference will also provide an opportunity for our Movement to give evidence of the energy with which it is pursuing its own as yet unaccomplished mission of developing all National Societies. While promoting the network of National Societies as an essential tool for aiding the most vulnerable, and hence for preventing crises, our Movement must also demonstrate its willingness to promote internal solidarity among its members and to revitalize those National Societies — too numerous alas — which still rest on a shaky foundation.

3. Mobilizing the public

The public at large must understand and support our Movement's work. This understanding is vital since most National Societies depend on voluntary service and private contributions. But it is also necessary because a National Society's public image is a major consideration for its country's government when called on to support its work. A sort of dynamism must thus be developed between efficient action to aid the most vulnerable, public approval of this action, and government support.

The Conference itself is not a driving force; it could even have a negative effect because of the dim view taken by the public of such large and costly gatherings whose impact is hard to assess.

The subject-matter dealt with should serve to draw attention in every country to the tragic fate of victims, and to the action taken by our Movement to help them. It is therefore felt important to discuss specific problems relating to the protection of the civilian population during armed conflicts, abuses committed against women, the suffering endured by

thousands of children, the crucial problem of water shortages and starvation, closely linked to population movements, and the scandalous proliferation of anti-personnel mines. The Conference also offers an opportunity to bear witness, to explain, to arouse compassion, and to encourage rejection of the unacceptable.

II. APPREHENSION CONCERNING THE CONFERENCE

1. Disputes over participation

The stormy and widely publicized debates in 1986 and which led to the expulsion of the South African government delegation have not been forgotten by many National Societies that bore the full brunt of the negative impact of these events on public opinion.

Nor has the crisis resulting from the last-minute indefinite postponement of the Conference due to be held in Budapest in 1991 — because of failure to agree on the form of Palestine's participation — been forgotten by governments, some of whose top-level representatives had travelled to Budapest for no purpose.

Neither the National Societies nor governments would countenance the recurrence of such events, which could cast fundamental doubts on the very *raison d'être* of the Conference.

Even though there is no sure way of guarding against such politically motivated incidents, the threat of which hangs over any assembly bringing together the States, all possible measures must be taken to avoid them. Potential problems are being pinpointed and an increasingly detailed dialogue is under way with governments through a group of ambassadors designated by the Standing Commission of the Red Cross and Red Crescent, as well as with States and other directly concerned groups. As things now stand, no problem appears insoluble, but the difficulties must not be underestimated nor must we fail to investigate every issue thoroughly.

2. Political dispute during the Conference

There is a great temptation, especially among States and other groups involved in political or military disputes, to use the International Conference as a forum for expounding their viewpoints and criticizing their adversaries.

Neither the Conference's terms of reference nor its short time-span allow for such confrontations which, given the right of reply, could quickly poison the atmosphere or even call into question all the results achieved. Such squabbles would inevitably have an adverse effect on the spirit of consensus needed for adopting resolutions on the issues discussed.

"Leave your knives in the cloakroom": the famous words of General de Gaulle are entirely applicable to the International Conferences of the Red Cross and Red Crescent, which are not intended to settle specific disputes, or even to discuss them at length.

Hence the importance of convincing all the participants in the Conference to make proper use of it as a forum for debate and for promoting humanitarian action and the protection of the world's most vulnerable people, and not as a sounding board for political causes. This message should be made clear as preparations for the Conference get under way.

Clear and firm control over the discussions at the Conference can also help avert this type of occurrence.

3. An abundance of material

Many participants are understandably and legitimately concerned with making the most of the long-awaited opportunity to discuss the topics they hold dear. However, as with a family coming together after a long separation, there is so much to be said that confusion could result. Therefore a selective approach must be taken.

The large number of participants and the short time available impose strict limits on how the Conference will be run.

The Standing Commission has decided to divide the basic work of the Conference into two commissions that will sit simultaneously. Some people would have preferred to have more of them so that more topics could be discussed, but this would mean that many delegations would not be represented on every commission. Consequently those delegations might, at the final plenary session, call into question the work done by the commissions. Moreover, some delegations are not even in a position to take part in two commissions at the same time. It is important that this problem be at least partially solved through regional cooperation and through in-depth dialogue during the preparatory phase.

The Standing Commission has also decided to set a limit of two items of substance per commission so that every delegation wishing to give an opinion will have time to do so. This is another unavoidable constraint that necessitates the setting of certain priorities.

The subject-matter selected so far is rich and abundant, reflecting the breadth of the topics to be discussed.[2]

Participants may also make additional suggestions, though everyone should take due account of the constraints referred to above.

Detailed prior negotiations with all participants will moreover be indispensable so that agreement can be reached in principle on decisions expected to be taken by the Conference on these major topics. This should also enable participants to focus their presentations — which should be brief — on the points they believe to be essential.

So many subjects to cover, so many people and so little time — each participant must take it upon himself or herself to strike a balance between these three parameters, which are immutable.

CONCLUSIONS

The International Conference of the Red Cross and Red Crescent should give rise to neither apprehensions nor illusions, but must be prepared meticulously so that it can meet the objectives expected of it in an orderly fashion.

The effort to help war victims and the most vulnerable people in our world is a long-term task which will not be completed in our time. Thus we must not ask of the Conference more than it can give.

What we can expect it to do is to highlight intolerable situations and acts, to identify appropriate short- and long-term measures for improving

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[2] The Standing Commission has so far selected four items of substance, namely:

— International humanitarian law: from law to action — Report on the follow-up to the International Conference for the Protection of War Victims;
— Protection of civilian populations in time of war;
— Principles and response in international humanitarian assistance and protection;
— Strengthening the capacity to assist and protect the most vulnerable.

Further details on the topics to be discussed under the above headings are now being prepared and will be presented at the meeting of the Standing Commission on 1 and 2 May 1995. The *Review* will of course keep readers up to date in this regard.

the lot of vulnerable people in such situations, and to make a firm commitment to provide the means necessary to implement these measures.

The Conference must therefore become a mobilizing force for all peoples, at the same time giving them an opportunity to express their solidarity with those who suffer and their wish to agree on specific commitments concerning areas where progress seems possible.

To meet both those objectives, the Conference must be shielded against political or partisan disputes, and governments must do everything in their power to help through their preparations for the event and by their attitude during its proceedings.

The success of the Conference, however, will depend most of all on the attitude of all the components of our Movement.

They are the ones who must mobilize the public at large and the governments of every country worldwide by using the Conference to defend those whom they seek to help, and by creating support and approval for their action.

They are also the ones who must imbue the Conference with the spirit of our Movement, making it a special event that stands apart from run-of-the-mill diplomatic meetings.

Our Movement will meet this challenge if it presents a united front, not by masking its diversity but rather by making the strength of its complementarity evident. It will thus be able to approach the Conference with confidence, viewing it as a constructive and forward-looking event for every participant.

If our Movement goes about its preparations in this frame of mind it will, together with the governments, contribute to the success of this meeting in which so much hope has been placed.

Yves Sandoz
Director
Principles, Law and
Relations with the Movement

Elisabeth Kornblum

A comparison of self-evaluating state reporting systems

— II —

Geneva, January 1995

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Note. The first part of this article was published in the January-February 1995 issue of the *Review* (No. 304, pp. 39-68).

CHAPTER 7

DISARMAMENT TREATIES

The reporting procedure on the implementation of disarmament treaties is called "verification". One of the main goals of verification is confidence-building between old adversaries, most notably the USA and the former USSR.

There is no general official and universally-accepted definition of verification. It includes the following components:

(1) the existence of an obligation, the fulfilment and observance of which must be verified;

(2) the gathering of information relating to fulfilment of the obligation;

(3) the analysis, interpretation and evaluation of the information from a technical, legal and political viewpoint;

(4) assessment concerning observance or non-observance of the obligation, which concludes the actual verification exercise. While the consideration of appropriate reactions to possible violation of an obligation appears to be a logical consequence of this exercise, it is not in itself an integral part of verification.[34]

7.1 Organizations

Two types of practices and proposals can be distinguished in the field of verification of arms control agreements. There are organizations dedicated solely to verification, and there are international organizations with a broader mandate that have received, or will receive a verification or monitoring function. There are only a few organizations, exclusively devoted to verification/monitoring.

The idea of multilateral and international organizations dedicated to or operative in the field of the verification of arms control agreements is currently receiving renewed and heightened interest, under the impetus of the CFE, CSCE and CW negotiations, and of the Gulf War settlement.

Various factors may explain this renewed interest in the role of international organizations:

[34] U.N. Doc. UNIDIR/92/28, 1.

— increased importance is being attached to the verification of disarmament agreements;

— the institution-building process is considered to have a high confidence-building potential;

— economic considerations may motivate advocacy of involvement by international organizations;

— the wish to deny access to certain types of weapons can also be considered a positive factor.[35]

The involvement of international organizations is opposed, however, on the grounds of economic circumstances and the confidentiality of the data. Another major objection is related to the political and legal elements of the verification process: no State is eager to delegate decisions that involve compliance to a third party or to an international body. There is a fine line between fact-finding and the political qualification of facts in an international co-operative environment.[36]

The UN Security Council may intervene in the verification process. The Council may carry out its own investigations and make its own assessments, as it did, for example, when chemical weapons were used in the conflict between Iraq and Iran.

Issues relating to the Gulf War, and the disarmament measures adopted by the Security Council in Resolution 687 (1991), which involve international control, raise problems of a different kind, namely, the consequences and settlement of an international conflict, rather than the verification of certain treaties. The obligations verified are those resulting from the Resolution and not directly from the treaties to which it refers. Certain obligations, for example, those relating to the destruction of missiles, do not fall under the aegis of any specific treaty.[37]

7.2 Functions

An international organization can provide technical services and assistance, or it can be a political mechanism for consultation. The former necessitates far greater investment and warrants a more integrated type of organization than does the latter. However, if the latter is really involved in evaluating data in compliance

[35] C. de Jonge Oudraat, "International Organizations and Verification", in *Verification of Disarmament or Limitations of Armaments: Instruments, Negotiations, Proposals*, UNIDIR, 1992, 207-208.

[36] *See* note 35.

[37] U.N. Doc. UNIDIR/92/28, 3.

issues, it will sooner or later also require an independent information and data-assessment capability.

Apart from the above, the organizations can have three functions: fact-finding (i.e., the collection and analysis of information and data); political and legal qualification of facts; and enforcement (i.e., responses, including possible sanctions).

The initial provision of data is the responsibility of each State concerned, and usually involves an exchange of data. It may, however, involve some participation by international organizations.

There are two types of fact-finding methods:

Surveillance is the systematic observation of some place or activity on a continuous or periodic basis; this may be divided into:

— intrusive methods, i.e., methods implying the presence of either a human agent or an instrument on a State's territory; and

— non-intrusive methods, such as remote-sensing techniques, particularly observation by satellites or perusal of scientific material.

Reconnaissance is carried out in the form of missions or *ad hoc* activities, generally aimed at a specific objective which for some reason has attracted attention.

Further distinction may be made between:

— hard/objective methods, i.e., information collected by technical means such as satellites, on-site inspection, or documentary control, and

— soft methods, i.e., information collected through political consultation mechanisms.[38]

Extra information-gathering techniques are a procedure for monitoring the data, possibly with on-site inspection measures, carried out by the parties on the basis of an international instrument. These inspections can be carried out either at random, or in the event of questionable activities. In this context, an international organization may, on occasion, intervene in order to establish the facts,

[38] *See* note 35.

as in the case of investigations into the alleged use of chemical or biological weapons.

The monitoring step is accompanied or followed by an information-processing step in which data recorded by the monitoring device are assembled into some appropriate form.

The technical analysis of data collected usually remains the responsibility of each State party; it may be simplified by cooperation among the parties in an *ad hoc* or pre-established context, by international assistance, or by an autonomous international mechanism, although the latter continues to be an exception.

The political and legal qualification of the data is, in principle, also the responsibility of each of the parties concerned; however, it may involve an international dimension, in particular through the machinery of advisory commissions among the parties, or through a genuine collective procedure.

An assessment of the seriousness of a possible breach is made in the same way, although its nature is more directly political. What must be assessed are the implications of the breach for the security of the States concerned. Possible publication and dissemination of the data continue to be at the discretion of the parties concerned.

A new method of verification is "citizens' verification", which in principle resembles the individual complaints procedure under the UN Human Rights Conventions. There is a precedent in US national law, where it is a duty of employees in the defence industry to report companies that are defrauding the government. It would be necessary to provide a duty and protection under the treaty, as well as mechanisms for evaluating information. At the moment it is doubtful whether such a system would receive support from States involved in or contemplating disarmament.

7.3 Treaties past and present

There are currently 24 arms control agreements in force, or recently signed; of these, three provide for the establishment of **international organizations with the specific aim of verifying compliance** with the agreement: the Modified Brussels Treaty of 1954, establishing the Western European Union and the now defunct Arms Control Agency; the Treaty of Tlatelolco establishing OPANAL (Agency for Prohibition of Nuclear Weapons in Latin America, 1976, known by its Spanish acronym); and the Guadalajara Agreement between Argentina and Brazil establishing the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC).

The bilateral (US-USSR) treaties, as well as the multilateral CFE Treaty, opted for a less institutionalized mechanism, namely, the **Consultative Commission**. The Antarctic Treaty, which should also be mentioned, establishes a **Meeting of Contracting Parties**.

The vast majority of multilateral agreements, however, do not provide for the establishment of an international organization or mechanism dedicated to verification, though some of the agreements leave open the possibility for creation of such a mechanism, through a clause permitting resort to "appropriate international procedures".

There are also treaties, such as the Biological Weapons Convention (BWC) and the 1925 Geneva Protocol prohibiting the use in war of asphyxiating, poisonous or other gases and of bacteriological warfare, that have no verification system.

7.3.1 Specialized institutions

The Arms Control Agency (ACA) is now defunct, but some remarks can be made on its functioning. It has been, over the years, a relatively independent and autonomous body, even with regard to the Council of the Western European Union, to which the Agency was directly answerable.

The Agency was always relatively small: in 1971, for instances, it had a staff of 52, including 21 of officer grade, and an annual budget of 3,900,000 BFrs.

The most interesting aspect of the WEU verification scheme lies in the fact that an integrated, international body carried out the verification. Most noteworthy in this respect are its experiences in the fields of data exchange and of random inspections.

Since 1984, when Member States decided to reactivate the WEU and to abolish all conventional controls by 1986, the status of the ACA has become unclear. A Director was supposed to be appointed in 1988, but never was. Apparently the Council annual reports no longer include Agency activities, and the Agency has *de facto* ceased to exist.

Compared with ACA, the OPANAL is far more institutionalized and autonomous (integrated). The fact-finding methods at its disposal to verify compliance include:

— semi-annual reports by the parties incorporating statements that "no activity prohibited under the Treaty has occurred";

— special reports by the parties which may be requested by the General Secretary with the authorization of the Council;

— special reports or studies by the General Conference, the Council or the General Secretary;

— special inspections carried out by the Council;

— routine inspections carried out under a safeguards agreement negotiated by each party with the IAEA.

The legal and political evaluation of facts is left to the General Conference. OPANAL has a very small international staff and an annual budget of $ 316,251. Little is published on the workings of OPANAL, and the proceedings of its General Conference are not widely disseminated. The comprehensiveness — both in terms of functions assigned to it and in terms of procedures and methods it is capable of invoking — as well as the international nature of the organization stand somewhat in contrast to its known activities. The fact that it has not yet had to implement any special procedures, such as inspections or requests for special reports, seems to be a positive sign. Nonetheless, it should not be forgotten that for the major countries of the region the Treaty has not yet entered into force. As in the case of the ACA, political reasons preclude OPANAL's fully exercising its theoretically far-reaching powers.

The ABACC has in principle the same form and objective as the OPANAL, but covers only Argentine and Brazil. It is thought that ABACC will eventually become a part of OPANAL.

7.3.2 Other possibilities

There is the Conflict Prevention Centre (CPC), which was established by the Charter of Paris for a New Europe, signed in November 1990. The Centre assists the equally newly-created Council of CSCE Ministers in reducing the risk of conflict and gives support to implementation of the CSBMs, as stipulated in the Vienna Document 1990.

Consultative Commissions, as set up for example as a Joint Consultative Group (JCG) for the multilateral CFE Treaty, are another possibility for verification of compliance with a treaty. In theory, the Commissions have no authority whatsoever with respect to the political and legal evaluation of compliance. Formally, they do not make any decisions in this field. Nevertheless, with the antagonism between the US and the USSR retreating into the background, compliance issues lose their explosive political character, and assessment hence becomes more dependent on objective and technical factors.

In 1990 the Treaty on Conventional Armed Forces in Europe (CFE) was adopted, limiting military personnel. Extensive inspections are foreseen in this

treaty as a confidence-building measure between former adversaries and as an opportunity to share sophisticated technologies via East-West cooperative inspection teams.[39] The States agreed that manpower, weapon systems, weapons and production facilities would be monitored.

CFE is a multilateral treaty, but it proceeds from East-West logic and thus has naturally followed the bilateral practice in establishing the JCG. The Group, like the other Commissions, has no fact-finding functions nor does it make any judgements concerning compliance; it is a deliberative body. It provides a forum in which parties may meet, discuss questions arising after data collection and analysis, and through which they may clear up ambiguities. Decisions or recommendations are made by consensus, and deliberations are private.

The **Meeting of Contracting Parties** was established by Article IX of the Antarctic Treaty and has been operative since 1961. It is composed of the original signatories and of those States that have acceded to the Treaty and that demonstrate their interest in Antarctica, by conducting substantial scientific research activity in the region, such as the establishment of a scientific station or the dispatch of a scientific expedition.

Only members of the Meeting are entitled to verify compliance with the Treaty. Verification (i.e., aerial observation and on-site inspections) may be carried out unilaterally or jointly, and possibly also through the Meeting, which is, *inter alia*, responsible for recommending measures regarding "the facilitation of the exercise of rights of inspection provided for in Article VII of the Treaty". The meeting convenes at regular intervals and is also the place where consultations take place and where data are exchanged.

The verification mechanism installed by the Antarctic Treaty (i.e., the Meeting of Contracting Parties) is of a highly discriminatory character and runs counter to the principle that all States have equal rights to participate in verification of the agreement to which they are parties.

Existing international organizations may also involve themselves with the verification of arms-control obligations, as provided for in the different existing agreements, or deriving from their more general mandates in the field of international peace and security. Examples are the United Nations, or regional organizations such as the Organization of American States (OAS), the Organization of African Unity (OAU), and the North Atlantic Treaty Organization (NATO), or organizations which have a specific technical or legal mandate, such as the

[39] *Sipri Yearbook 1993, World Armaments and Disarmament*, 606 ff.

International Atomic Energy Agency (IAEA) and the International Court of Justice (ICJ), whose authority is usually confined to technical assistance or fact-finding missions. Organizations in the first category may also derive their authority to intervene from their statutes.

Numerous proposals exist to establish organizations dedicated to non-treaty-specific verification or monitoring. Since they are not related to any specific agreement, they can exercise monitoring functions only by gathering data. No such body has yet been established or is likely to be set up in the near future.[40]

7.4 Treaties — proposals

There is the Non-Proliferation Treaty (NPT), regarded as the cornerstone of efforts to prevent the spread of nuclear weapons. It is not global and is not aimed at disarmament but at preventing proliferation.

As its basic system of reporting, NPT requires States to set up a **national** verification system, which reports to a **central documentation centre**, that sends monthly reports to the International Atomic Energy Agency (**international level**). The data are stored in the Safeguards Information System (ISIS), a computerized data bank.

This system is enhanced by containment and surveillance measures, which are usually technical and concentrated on specific nuclear specific issues, for example, surveillance cameras at nuclear installations, and satellites.[41]

The Chemical Weapons Convention (CWC) is a historic multilateral agreement, banning all chemical weapons worldwide, imposing a wide spectrum of inspections to verify the ban, outlawing any use of these weapons and imposing a strict ban on all activities to develop new chemical weapons. The CW Organization has been assigned only fact-finding tasks.

The verification system envisaged for the CWC faces two main challenges not previously encountered on such a large scale and with so many variables. First, there is verification of the measures to meet non-production requirement (e.g., closure of production facilities, destruction and conversion activities) and,

[40] *See* note 35.

[41] F. Mautner-Markhof, in R. Kokoski and S. Koulik (eds.) *Verification of Conventional Arms Control in Europe, Technological Constraints and Opportunities* (1990), 251-261.

second, there are measures to ensure that there is no violation as a result of non-prohibited activities.

The international verification organization will be made up of three bodies: a conference of States parties, an executive council and a technical secretariat, supported by an international inspectorate and with national provision of information as the basis for verification activities.

The possibility of requesting challenge inspection, applicable to all activities regulated by the CWC, gives the system an element of deterrence and will also increase confidence in the CWC.

The implementation of the Convention at national and international level will require lines of communication between the various components of the verification organization and the national authority of each state party; such a communications system will probably be multi-purpose.

In general, CWC verification focuses specifically on the civilian chemical industry and the particular destruction undertaking; however, limited use of some applied technologies and verification tools will also be relevant for conventional arms-control verification.[42]

Estimates have been made of the human resources and finances required. The Organization would probably need a total of 603 inspectors (340 would supervise destruction operations and 138 would carry out challenge inspections) and a support staff of 400, making a total of 1,000. Total costs would be around $160 million.

The Open Skies Treaty, negotiated from 1989 onward, would allow flights by unarmed reconnaissance aircraft over the territories of states. Potentially, the treaty improves openness and transparency, facilitates the monitoring of compliance with existing or future arms-control agreements and strengthens the capacity for conflict prevention and crisis management within the framework of the CSCE. It is a possible method of verification.

The United Nations Register of Conventional Arms, if complied with universally, could develop into a far-reaching international control mechanism which could create unprecedented transparency, both in the international trade in arms and in the national production of arms. It is a framework for dialogue in a specific area of military activity and a basis for future verifiable limitations and reductions.

[42] T. Stock and J. Matousek, in R. Kokoski and S. Koulik (eds.) *op. cit.*, 264 - 272.

7.5 Conclusion

Verification procedures are included in disarmament treaties for the very reason that they should not be included in other treaties, since they make the system inflexible. States do not want disarmament verification systems to change.

Procedures for verification of disarmament are treaty-specific. They are extremely expensive when equipped with an institution for verification, and not very effective without one. Moreover verification works only when the scope of the treaty is limited in time and objectives. Cost-effectiveness and efficiency are only atttainable when there is a limited group of like-minded and similarly resourced States, as, for example, in Western Europe. In universal or multilateral contexts, where the discrepancies in means, both technical and financial, are great, costs are often considered prohibitive. Indeed, those States with the strongest financial and technical resources end up paying for a collective effort, with no notable or concrete returns. The proposal for a UN-operated International Monitoring Agency is an example of this kind.

The low level of institutionalization for multilateral treaties is therefore not surprising. Indeed, the ACA and to a greater extent OPANAL and the future CW organization appear to be real exceptions. Furthermore, even if institutionalized, their functions and the methods at their disposal remain limited to fact-finding. On-site challenge inspections remain the solution to everything both in the CWC framework as in the CFE context. The legal/political evaluation of facts, let alone responses, has not yet been considered in negotiations despite increasing recognition of its importance. Nonetheless, States are increasingly recognizing the importance of international consultation on compliance and feel the need to institutionalize this process.

CHAPTER 8

ENVIRONMENT TREATIES

Supervision on the implementation of international environmental regulations can be delegated to a specific State, to each State party[43] or to a special international body.[44]

[43] Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, adopted in Basel on 22 March 1989.

[44] 1980 Canberra Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

An example of delegation of supervision to a specific state is when a ship voluntarily enters a port or off-shore installation the coastal state can investigate.[45]

Most environmental treaties require States to submit periodic reports on the implementing measures that they have taken. The extent of this obligation varies, but it usually covers at least the measures taken by parties towards **implementing their obligations**.[46] Information must also usually be provided to enable assessment of **how effectively the treaty is operating**. The 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources, for example, calls on the parties to report on levels of marine pollution and on the effectiveness of measures adopted to reduce it. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes requires an annual report on all aspects of transboundary trade and disposal of such substances, and on "such matters as the conference of the Parties shall deem relevant".[47] Similarly, Article 8 of the 1973 Convention on the International Trade in Endangered Species (CITES) requires the parties to maintain records of trade in listed species and to report on the number and type of permits granted. This information must be made available to the public. In some cases, reporting requirements are designed to **monitor how well the parties are enforcing a treaty**. Thus, the 1946 International Convention for the Regulation of Whaling and the 1991 Protocol to the Antarctic Treaty on Environmental Protection oblige the parties to submit reports by national inspectors concerning infractions, while the 1973 International Convention for the Prevention of Pollution by Ships (MARPOL) calls for reports from national authorities on action taken to deal with reported violations and on incidents involving harmful substances.

Among international supervisory bodies is the Organization of African Unity, responsible for the African Convention on the Conservation of Nature and Natural Resources. The CITES requires States to file reports annually to its Secretariat, like the Montreal Protocol on the Ozone Layer, which also has its own Secretariat.[48]

The information gathered is meant to enable the parties to review and evaluate the impact of a treaty. When the information must be made public, NGOs and other interested groups are also able to monitor progress. The obvious

[45] Article 218 of the Law of the Sea Convention.

[46] See also: A. Kiss and D. Shelton, *International Environmental Law*, 1991, 98-101.

[47] Article 13.

[48] A. Gallagher, The "New" Montreal Protocol and the Future of International Law for Protection of the Global Environment, in *Houston Journal of International Law, Volume 14*, Winter 1992, No. 2, 337.

weakness is that much will depend on the diligence and accuracy of the reporting authorities. Therefore use is also made of fact-finding methods, research and inspection.[49]

CHAPTER 9

OVERVIEW, CHARACTERISTICS AND A POSSIBLE SYSTEM FOR INTERNATIONAL HUMANITARIAN LAW

This chapter is divided in three parts. The first part discusses the concept of a reporting system: what it is, how it functions, its effectiveness, and what it requires in terms of human and financial resources within the framework of international organizations other than the ICRC.

The second part evaluates the characteristics that influence the success or failure of a reporting system. The third part puts forward a possible reporting system, on national measures of implementation of international humanitarian law which already have to be taken in peacetime.

9.1 The concept of a reporting system

Unfortunately, humanitarian agreements tend to be utilized as tools of domestic political rhetoric, allowing States to "reap the public image benefits of signature without bearing the cost of implementation". Even if an intention to comply is present at the time of signature, this is not of itself sufficient to guarantee effective implementation. First, officials or agencies that negotiate agreements are not always those authorized to ratify or otherwise implement them.[50] Second, the accepting government may fall from power and its successor may be unwilling or unable to honour its commitments. Third, a government's administrative capacity may be insufficient to permit discharge of its obligations.[51] One of the goals of a reporting system would be to overcome this problem and end, or at least limit, non-implementation.

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[49] P.W. Birnie, A.E. Boyle, *International Law and the Environment*, 1992, 166-167.

[50] This problem is partly overcome in the OECD system, where policy decisions are taken at ministerial level.

[51] *See* note 48.

A reporting system is part of an implementation system. It supplies information from each State on the operation and implementation of a treaty by that State, it monitors at national level. One way of supplying information is by a self-evaluating report. Self-evaluating reports are assessments of a State's performance by that State, not by other States or by independent agents, such as special rapporteurs or non-governmental organizations, through these may later play a role in verifying the data received.

The information thus obtained may be submitted to an international institution having a supervisory role.

The **key tasks of an international supervisory institution** are those of gathering information and data by receiving, for example, self-evaluating State reports, of facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of States or the negotiation of further measures and regulations. Such institutions may thus acquire semi-official law-enforcement and law-making functions. Law-enforcement consists in requiring States to be accountable to other Member States, i.e., imposing a form of collective or communal supervision. To the extent that supervisory bodies are open to participation by other interested parties or NGOs with observer status, this accountability may extend to a wider public.

Supervision of this kind also entails the negotiation and drafting of detailed rules, standards or practices, usually as a means of giving effect to the more general provisions of treaties. Not only does this form of law-making or international regulation facilitate treaty implementation, it also gives treaties a dynamic character and enables the parties to respond to new problems or priorities.

Thus, the combination of regulatory and supervisory functions in the hands of international institutions is of importance in making international agreements operate more effectively. The absence of any provision for institutional supervision or regulation is, by contrast, often a sign that the treaty in question is bound to remain ineffective.

Proper supervision of the operation and implementation of treaty regimes depends on adequate information, much of it supplied by self-evaluating State reports. But international institutions are not confined to a passive role as recipients of information: in many cases they are competent to conduct fact-finding or research. The most assertive method of information-gathering and supervision allows international institutions to undertake inspections (in-country or on-site) to verify compliance with international agreements and standards.[52] Some sys-

[52] *See* note 48.

tems have a follow-up procedure, e.g., technical assistance, field missions or field representatives, or there are subsidiary procedures to correlate the information received, for example, inter-state and/or individual complaints procedures, enquiry procedures, also reports from various sources and on-site missions.

9.2 Evaluation

The thorough study of various reporting systems highlights certain factors that influence the success of a system. One factor alone is usually not decisive, but combinations of factors can determine the effectiveness of a system. On the basis of these factors, an outline of a possible reporting system on national measures of implementation of international humanitarian law is put forward.

9.2.1 Influencing factors

The sensitivity of the subject

The more sensitive an issue, the less likely States are to report on it. For example, torture and racial discrimination are sensitive issues: no State likes to admit that these occur on its territory. Disarmament and humanitarian subjects are sensitive because they are linked to the national security of a State, always a sensitive issue. Cultural identity used not to be sensitive, but in recent years States and peoples react violently on this subject. Children are an example of an issue that is not sensitive. Every State is eager to report on all it does to help children.

The economic value of the subject

A subject that may increase prosperity is a positive incentive for reporting. Good examples are the OECD and the WIPO, where States may benefit economically when they share information or adhere to a Convention.

The specificity of the subject

This aspect is closely linked to the national level on which the reports are produced. The more specific the reporting requirements are the more likely it is that meaningful reports will be produced. For example the ILO, OECD, UNESCO, Disarmament and Environment Conventions deal with very specific issues, but the topics of the CRC, HRC, CESCR and WIPO tend to be more general in scope. When a Convention is broad and general, difficulties in reporting can be reduced by restricting the reporting obligation to very specific subjects, with very specific guidelines.

The popularity of the subject in the media

Media coverage is usually a positive incentive, but linked with a sensitive subject it can become a deterrent to reporting by States.

Secretarial support

This factor is crucial for the functioning of a reporting system. Without a well-staffed secretariat a reporting system is inoperable, since not only the organization of the reporting system, but also its quality and effectiveness, depend on the secretariat. It could be argued that the role of a secretariat is more crucial than that of a supervisory body.

The importance of adequate secretarial support is underlined by the following: the chairpersons of the human-rights treaty bodies have noted that there is a "close link between adequate secretariat resources and the effective functioning of the treaty body system".[53]

The flexibility of the reporting procedure

Reporting systems usually function for decades. As situations and concepts change, the system should be, to a certain extent, adaptable to these changes to avoid becoming obsolete. Therefore it is better to leave the procedural aspects of a system out of a Convention as much as possible, in order to keep the procedure flexible, adaptable and up to date.

A permanent body to which to report

The Convention on the Elimination of the Crime of Apartheid is a good example why an *ad hoc* body does not work. During one of the most important eras in its history, the elections in South Africa, it was not possible to convene the body because it had no members. Accordingly, the establishment of a supervisory body with a permanent character is recommended to ensure continuity.

The quality and efficient functioning of a supervisory body

States are much more keen to report to a body composed of important people, since this lends weight to the body's conclusions concerning a State. High-ranking people also have personal contacts that may persuade a State to submit a report. The Human Rights Committee is a good example: it is considered as a body of high standing that develops human-rights law, and States are willing to report to it.

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[53] A/47/628, annex, para. 20, in E/CN.4/1994/101, pp. 2, 3.

The degree of institutionalization of an international organization depends largely on the existence and/or diversity of its inter-state and/or integrated bodies, which are distinguished by their composition. An inter-state body is composed of representatives of Member States, while an integrated body is made up of independent experts having no obedience to a particular Member State.[54]

Experts should be good, discreet, professional and well informed, and their judgements should be consistent. For them to be well informed, they must have access to information from a variety of sources or be able to initiate information. This heightens the standing of the body and makes States take their obligations more seriously. When bodies take contradictory decisions or appear to be prejudiced, it has an adverse effect on the submission of reports. Political tendencies should be at all times avoided, since they act to the detriment of the system.

Follow-up

The existence of any form of follow-up, either to the state report or to the conclusions from the supervisory body, is a major factor in the effective functioning of the reporting system.

The reaction to a state report can be a report, an opinion or a judgement. These may be public or confidential. The strength of the conclusion can benefit a State, which will have clear guidelines, and it can be used by others to facilitate follow-up.

It is best if the reporting system is combined with other systems of preventive monitoring and ideally also with a system providing a means of reacting to violations at international level. Examples of preventive monitoring are the initiation of inquiries or requests to a body or a person to investigate a situation or a country. Examples of systems that react to violations are individual or inter-state[55] complaints procedures, and investigations by a body or a person, e.g., a fact-finding commission. These systems may be either confidential or public. If the latter, the resulting publicity may constitute additional follow-up.

The availability of technical assistance programmes is also a positive incentive for a State to submit a report, especially to States that are not otherwise able to produce a report or have difficulties with regard to the implementation of a convention.

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[54] This point is also put forward by F. Hampson, "Monitoring and Enforcement Mechanisms in the Human Rights Field", in *Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law, Geneva 30 May - 1 June 1994*, ICRC Report, July 1994, p. 128. But she warns that certain States are believed to attempt to influence "their" independent experts or put only senior government officials forward as candidates.

[55] States do not usually complain of the non-compliance of another State.

Admission to an international instrument

The OECD, the WIPO and the Council of Europe use the mechanism of admission, and so far it appears very effective. States are forced to act on the recommendations of the body if they wish to reach a member status.

The existence of a national monitoring body

At national level there is one crucial factor underlying all the problems of the reporting systems. This is the existence or absence of a national reporting/monitoring structure. This topic will be further discussed in section 9.3.2.

Certain factors, such as the sensitivity and the economic value of a subject, cannot be influenced. On the other hand, **the secretarial support, the specificity of the reports demanded,** and **the follow-up** can be influenced and are crucial for the success of a reporting system. These aspects should therefore receive most attention when considering a new reporting system.

9.3 Possible focused reporting system on national measures of implementation of international humanitarian law

In its "Final Declaration" adopted 1 September 1993, the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) referred to an intergovernmental group of experts to be convened by the Swiss Government, with the task of studying, *inter alia*, "**practical means of promoting full respect for and compliance with [international humanitarian law], and to prepare a report for submission to the International Conference of the Red Cross and Red Crescent".**

The Meeting's main topic — respect for international humanitarian law (IHL) — may be divided into **three aspects**:

(1) **universal applicability** of the pertinent international instruments;

(2) **prevention** of violations of IHL;

and

(3) **observation** of IHL and **repression** of violations.

9.3.1 At the international level

In a reporting system for the ICRC, States should be required to report on:

(*a*) implementation
- — of national measures for the repression/punishment of violations,
- — of an internal monitoring system on the observation of IHL by armed forces,
- — of a national interministerial committee,
- — of cooperation between States for
  - — regional seminars organized by the ICRC, and
  - — communication of data to a central body (ICRC);

(*b*) dissemination
- — education of armed forces,
- — coordination of efforts to spread the knowledge of IHL (e.g., in schools) by, for example, the Ministry of Education.

The information required must be very specific, for example, translations of the Conventions, national laws, then military manuals and, later, updating of national laws. The reports are thus very specific and constitute a focused reporting system, to ensure effectiveness. It has become apparent that a widespread general approach is much less effective than small-scale intensive approaches. This point will be discussed in more detail below.

A feature of the system could be a reporting cycle of four years, to coincide with that of the International Conferences of the Red Cross and Red Crescent. The ICRC would then submit a report to each International Conference on the results of the most recent reporting cycle.

A secretariat is essential for requesting reports, organizing the meetings and distributing the papers, but also for carrying out research into reporting States (e.g., finding earlier reports by these States for other bodies such as the UN, UNESCO, ILO, etc.) and making specific inquiries. It must also be possible for the secretariat to assist States in producing reports. The staff of the secretariat will have to include specialists[56] on humanitarian law, on reporting/monitoring/technical assistance and on advisory services. In existing reporting systems, the expertise within the secretariat is such as to justify reports being submitted, not to a supervisory body, but only to the secretariat. Such a procedure would

[56] E/CN.4/1994/101, p. 2.

eliminate the judgemental factor almost completely, and the main focus would be on cooperation between the secretariat and the State — an ideal situation for the ICRC, since any hint of criticism of a State can imperil operations in the field and may even endanger the lives of personnel.

The incorporation of such a secretariat within the ICRC would be relatively simple. The secretariat could continue the work already performed by the ICRC, but in a more detailed and specialized way.

Reporting countries could be divided into categories, possibly according to the existing ICRC practice of zoning, whereby a small department of 3 professionals deals with the reports from a single zone. This practice permits specialization on a zone, and lawyers can team up with operational staff to exchange information to their mutual benefit. For example, if there are 186 reporting States, then the six ICRC operational zones would each include 31 States, i.e., 8 States per year would send reports.

An international supervisory body could be established. It should consist of outstanding scholars, members of the armed forces, diplomats and possibly social workers or field delegates/development experts, to get the broadest representation of specializations and interests. The experts could be independent or state representatives. With state representatives, the system is less costly; and another advantage might be that States would feel less attacked by observations coming from state representatives rather than from independent experts. The body itself must be free to decide whether its conclusions will be published or not. It should meet once or twice a year, depending on the volume of reports received. Intervals between meetings should be flexible, and for the body itself to decide.

The creation of a supervisory body has some advantages. One of the weakest points of a reporting system is that States cannot be forced to submit a report. Several psychologically important factors can offset this weakness: States may be pressured into submitting a report by media attention, by a prestigious body, or by intensive follow-up of a report or the request for a report. These factors all influence each other, but the first two points, media attention and the prestige of a body, are closely linked. When there is no supervisory body, the follow-up and the attention of secretariat staff to States must be intensified.

A documentation centre,[57] where crucial documents can be stored and are accessible to the secretariat, and computerized retrieval,[58] are essential to the proper functioning of the system.

[57] *See* note 56.

[58] *See* note 56; the ILO system is computerized; revision is under consideration.

The review of reports could result in advice on IHL, technical assistance or other positive incentives being offered to States. The body would be able to advise on accession to international fact-finding commission/inquiry procedure and thereby help that procedure to become more effective.

The reporting system does not have to function indefinitely: reassessment after two to three four years cycles will show whether it meets expectations. That way the system is kept flexible.

9.3.2 At the national level

The fundamental problem of a reporting system is not at international level, but at national level. The crucial nature of this factor cannot be fully appreciated unless the nature of a reporting system is completely understood.

A reporting system is a mechanism whereby States assess the level of implementation of international treaties in, for example, their own national legislation. The reports are not primarily a method of control/verification, but a means of verifying the functioning of state systems of accountability and control, ensuring by independent measurements and inspections that the state is meeting its obligations.

It is vital for a reporting system at international level to be supplied with reports produced at national level. But in order to produce such reports, a State must possess a reporting system at national level, provided with data by specialists within the country who know about national legislation and legal practice, government policy, the armed forces and national security. Unless all this knowledge is used for preparation of an international report, the report is unlikely be satisfactory.

Another aspect is more directly linked to the effectiveness of prevention. The best deterrent to violators is effective prosecution,[59] which requires an effective legal mechanism. The absence or the shortcomings of a legal system can be noted in reports on such matters. These reports, followed up by a technical assistance programme, could go a long way towards making prevention more effective.

There is always the risk that recommendations made by the international supervisory body are not followed up at national level, because no national entity has been mandated to implement the recommendations. The failure by States to follow up the general comments and concluding observations of the experts of international organizations is the reason why most reporting systems are not more effective.

[59] *See* note 54.

This problem has been recognized by a number of international organizations. For example, the ILO uses the employers' and workers' associations at national level to check government reports and to supply commentaries. Thus there is a means of determining whether the recommendations of the international body are put into practice. An advantage of this system is that the non-government party or parties know(s) the situation within the country. For the ICRC, the National Societies of the Red Cross and the Red Crescent may fulfil this role by urging States to submit reports, by monitoring their contents and by verifying implementation of the Conventions.

A similar system is developing for the human rights treaties, with specialized NGOs taking over several tasks of the secretariat, supplying extra information on the government reports and using the concluding observations to pressure governments to follow up the recommendations.

The offer of technical assistance can be an important incentive to the reporting States. The aim of assistance should be to set up within the government a system, staffed by local personnel from different backgrounds, to prepare national reports describing the situation in their country.

ICRC delegates in the field would be able to support the National Societies through bilateral steps with governments or by explaining the reporting system.

CONCLUSION

A reporting system is essential if any progress is to be made in the implementation of international humanitarian law and in preventing violations.

The system can be operated by an independent body of distinguished experts from widely different backgrounds. It must be supported by an adequate secretariat that can develop initiatives when it deems it to be necessary.

At national level, there should be a system for monitoring the situation within a State and for preparing reports to national and international bodies.

A reporting procedure alone however is not sufficient. The Secretariat should be enabled to help a State to derive the fullest benefit from the Conventions it has signed. Technical assistance should be given to those States that ask for it, or that are considered to be in need of assistance by the international body. In addition, the Secretariat should be capable of assessing needs and carrying out missions in the field in order to help States. The National Societies should be integrated into the system of monitoring implementation at national level.

In brief an effective reporting system should be supervised by an independent international body, but it is possible to operate it with a technical secretariat. Incentives to comply with reporting obligations should be provided by assistance programmes at international level, and by encouraging States to set up national monitoring machinery. Adequate human and financial resources are essential to the effectiveness of a reporting system.

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AN OVERVIEW OF THE REPORTING SYSTEMS

TABLE 1

Organisation	*Conventions*	*Personnel of the Secretariat*	*Body Members*	*Field offices also working on implementation*	*Percentage of submitted reports*	*Budget (per year)*
United Nations	6 Conventions 6 Secretaries	10 Professionals 74 Experts (part time)	Independent	Yes	10 - 60%	$15.000.000
UNESCO	2 Conventions 10 Recommen-dations	4 Professional 2 Secretaries	----	No	some 10%	+/- $ 800.000 (total budget is $4.965.000: 6)
ILO	181 Recommen-dations 174 Conventions	40-50 Professionals 10-15 Secretaries 14-15 Field Officers	Independent: 20 Experts (part time) State Representatives	Yes	some 70%	(no information has been supplied by the ILO)
WIPO	2 Major Conventions	25 Professionals 11 Secretaries	----	Yes	some 70%	min. Sfr. 2.000.000 (probably more than double)
OECD	4 Major Reporting Obligations 25 Working Groups	829 Professionals 662 Other Personnel	State Representatives	No	some 100%	FFR. 1.453.006.097 (1992)
Disarmament	2 Conventions	50/60 Professionals(?)	State Representatives	No	100%	$ 88.000.000 - 138.000.000

Refugees and internally displaced persons

International humanitarian law and the role of the ICRC

by Jean-Philippe Lavoyer

1. Introduction

The main purpose of this brief study is to show the importance of international humanitarian law, in particular the Geneva Conventions of 1949 and their Additional Protocols of 1977, for internally displaced persons, i.e. persons displaced within their own country, and to refugees, i.e. persons who have fled their country. Not only does this body of international law protect them when they are victims of armed conflict, but its rules — if scrupulously applied — would make it possible to avoid the majority of displacements.

In addition, attention will be drawn to the particular role played by the International Committee of the Red Cross (ICRC) on behalf of refugees and displaced persons, a role which combines legal intervention with operational action. The mandate of the other components of the International Red Cross and Red Crescent Movement (in short, the Movement) will also be discussed.[1]

After a brief review of international humanitarian law, the ICRC's mandate will be outlined and the problems faced by refugees and displaced persons will be examined from a legal and institutional standpoint.

[1] In addition to the ICRC, the Movement consists of 163 National Red Cross or Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (in short, the Federation).

Finally, a few comments will be made on current deliberations with regard to displaced persons.

2. International humanitarian law

International humanitarian law — also known as the law of armed conflict or law of war — consists of rules to protect people in time of war who are not, or are no longer, participating in the hostilities, as well as to limit the methods and means of warfare. It is a 'realistic' law, which takes into account not only requirements stemming from the principle of *humanity*, upon which humanitarian law is based, but also considerations of *military necessity*.[2]

The main instruments of humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. The *Geneva Conventions* protect the following people: wounded, sick and shipwrecked members of the armed forces (First and Second Conventions), prisoners of war (Third Convention), and civilians, particularly when they are in enemy territory and in occupied territories (Fourth Convention). The *Additional Protocols* have above all increased the protection of the civilian population from hostilities, while also limiting the methods and means of warfare.

Virtually every State is party to the Geneva Conventions of 1949,[3] and the tendency towards universal acceptance of the Additional Protocols has been confirmed.[4] Protection under international humanitarian law covers two areas:

— international armed conflicts: the Geneva Conventions and 1977 Protocol I are applicable;

— non-international armed conflicts: in situations of internal strife, Article 3 common to the four Geneva Conventions and 1977 Additional Protocol II are applicable.[5]

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[2] We suggest the following works for readers wishing to delve more deeply into this subject: Hans-Peter Gasser, *International Humanitarian Law: An Introduction*, in Hans Haug, *Humanity for All*, Henry Dunant Institute/Haupt, Geneva, 1993, and Frits Kalshoven, *Constraints on the Waging of War*, ICRC, 1991.

[3] As of 31 March 1995: 185.

[4] As of 31 March 1995: 137 States (Protocol I); 127 States (Protocol II).

[5] Common Article 3 contains several fundamental principles applicable in every situation of armed conflict, and is itself a "mini-convention". Protocol II has a higher threshold of application than that of Article 3 inasmuch as the armed opposition must exercise "such control over a part of the territory whereby it can carry out sustained and concerted military operations."

Particularly noteworthy among the humanitarian law treaties covering the use of certain weapons is the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, one of whose three Protocols restricts the use of mines.

States have a collective responsibility for compliance by other States and armed opposition movements with the Geneva Conventions and Protocols.[6] They also have the obligation to bring persons accused of having committed grave breaches thereof before their own courts, and they may also hand such persons over to another State for trial.[7]

Although humanitarian law and international human rights law are two separate branches of public international law, they have a common goal, namely to protect human beings. Humanitarian law safeguards the most basic human rights in the extreme situations that take the form of armed conflict. Thus these two bodies of law, plus refugee law, should be considered as complementary.

In disturbances and other violent situations not covered by humanitarian law, recourse may be had to international human rights law and to fundamental humanitarian principles, set forth in particular in the Declaration of Minimum Humanitarian Standards adopted at Turku (Finland) in 1990.[8]

The provisions of the Geneva Conventions and Additional Protocols are very specific. The following is a summary of certain especially important rules of conduct which apply to all armed conflicts:

— people who are not, or are no longer, taking an active part in hostilities, such as the wounded and sick, prisoners and civilians, must be respected and protected in all circumstances;

— civilians must be treated humanely; in particular, violence to their life and person is prohibited, as are all kinds of torture and cruel treatment, the taking of hostages, and the passing of sentences without a fair trial;

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[6] Article 1 common to the Geneva Conventions: "The High Contracting Parties undertake to respect and *to ensure respect* for the present Convention in all circumstances" (emphasis added). See also Article 89 of Protocol I, whereby States undertake to act in cooperation with the United Nations in situations of serious violations.

[7] This involves the principle of universal jurisdiction. Grave breaches (war crimes) are defined in each of the four Geneva Conventions (Article 50 of the First Convention; Article 51 of the Second; Article 130 of the Third; and Article 147 of the Fourth), and in Protocol I (Articles 85 and 11).

[8] Also known as the "Turku Declaration". See *International Review of the Red Cross (IRRC)*, No. 282, May-June 1991, pp. 328-336.

— the armed forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. It is prohibited to attack civilians and civilian objects, and all precautions must be taken to spare the civilian population;

— it is prohibited to attack or destroy objects indispensable to the survival of the civilian population (e.g. foodstuffs, crops, livestock, drinking water installations and irrigation works); it is prohibited to use starvation as a method of warfare;

— the wounded and sick must be collected and cared for; hospitals, ambulances, and medical and religious personnel must be respected and protected; the emblem of the red cross or red crescent, which symbolizes this protection, must be respected in all circumstances; any abuse or misuse thereof must be punished;

— parties to a conflict must agree to relief operations of a humanitarian, impartial and non-discriminatory nature on behalf of the civilian population; aid agency personnel must be respected and protected.

3. The ICRC's mandate

Founded in 1863, the ICRC has been mandated by the community of States, under the Geneva Conventions and in recognition of its long-standing practical experience, "to work for the faithful application of international humanitarian law".[9] To this end, it makes appropriate representations to all parties to conflict (i.e. government authorities and armed opposition groups) in order to encourage full respect for this law. It informs them of its observations, offers suggestions and reminds them whenever necessary of their obligations. The ICRC exercises this supervisory mandate by seeking to establish a relationship of trust with belligerents. Although its observations are kept confidential out of a desire to cooperate and to obtain access to the people it endeavours to protect and assist, this principle of confidentiality is not absolute, as evidenced by numerous public denouncements concerning in particular the conflicts in the former Yugoslavia and Rwanda.[10]

[9] Article 5, para. 2 (c) of the Statutes of the Movement, revised in 1986 by the 25th International Conference of the Red Cross. It should be noted that the States party to the Geneva Conventions attend these international conferences as full members of them and that by participating in the adoption of the Statutes they expressed their desire to allocate specific tasks to the respective components of the Movement.

[10] The ICRC denounces grave violations of humanitarian law when all its representations fail and it is in the interest of the victims to make such a denouncement. See "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83.

So that the ICRC can effectively carry out its duties as the *guardian of international humanitarian law*, the Geneva Conventions grant it right of access to prisoners of war (Third Convention) and to civilians protected by the Fourth Convention.[11] They also grant it a very broad right of initiative.[12] If there is no Protecting Power, the ICRC can moreover act as a substitute for it.[13] The ICRC also has the legal responsibility "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof" (Article 5(g) of the Statutes of the Movement).

The States have also assigned the ICRC the task of providing *protection and assistance* to victims of armed conflicts and internal strife, and of their direct results.[14] Numerous operational activities have been carried out in this regard, particularly in situations of internal violence (armed conflict and unrest).[15]

The Statutes of the Movement specify the other tasks within the ICRC's mandate, particularly that of upholding and disseminating the Fundamental Principles of the Movement[16] and of ensuring the operation of the Central Tracing Agency.[17]

Finally, the ICRC has the statutory *right to take any humanitarian initiative*, i.e. to offer its services whenever it considers that its specific status as a neutral and independent intermediary can help solve problems of humanitarian concern.[18] This right has the character of customary law.

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[11] Article 126 of the Third Convention and Article 143 of the Fourth Convention, which stipulate the following conditions for visits: access to all protected people, right to interview such people without witnesses, no restrictions on the frequency of visits.

[12] Article 9 of the First, Second and Third Conventions; Article 10 of the Fourth Convention; and Article 81 of Protocol I. Regarding non-international armed conflicts, see Article 3 common to the four Conventions.

[13] Article 10 of the First, Second and Third Conventions; Article 11 of the Fourth Convention; Article 5 of Protocol I. In practice, the ICRC most often acts on the basis of its right of initiative.

[14] Article 5, para. 2(d) of the Statutes of the Movement.

[15] For detailed information, see Marion Harroff-Tavel, "Action taken by the International Committee of the Red Cross in situations of internal violence", *IRRC*, No. 294, May-June 1993, pp. 195-220.

[16] The work of the Movement is governed by the following Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

[17] Article 5, para. 2(e) of the Statutes of the Movement. In particular, the Central Tracing Agency seeks to restore and maintain ties among members of families split up by conflicts or disturbances, as well as reuniting members of such families.

[18] Article 5, para. 3 of the Statutes of the Movement.

In situations not covered by humanitarian law, for instance disturbances, the ICRC bases its activities on the universally recognized humanitarian principles, on the "hard-core" human rights which cannot be waived in any circumstances, or on other human rights.

The ultimate embodiment of the ICRC's work is to be found in its role as a *neutral and independent intermediary*. It serves not only as an intermediary between States, but also between victims of armed conflict or internal disturbances and the State or armed opposition movements.

These numerous responsibilities have made the ICRC an organization with a *unique status*. Even though it is itself a private non-governmental organization, the duties and responsibilities assigned to it by international law give it an extremely international scope of activity; it is therefore widely recognized as having an international juridical personality. In 1990, the ICRC was moreover granted observer status in the United Nations General Assembly.[19] The ICRC has also concluded headquarters agreements with many countries in which it operates. These agreements confer immunities and privileges upon it, thus placing it on the same footing as an inter-governmental organization.[20]

4. Refugees

4.1 Protection under international humanitarian law

Whereas refugee law contains a specific definition of refugee,[21] humanitarian law is very vague and only rarely employs the term. All the same, this does not mean that refugees are neglected by humanitarian law, since they are protected by it when they are in the power of a party to a conflict.

During international armed conflicts, nationals of a State who flee hostilities and enter the territory of an enemy State are protected by the

[19] Resolution 45/6 of 16 October 1990. See *IRRC*, No. 279, November-December 1990, pp. 581-586.

[20] In particular, headquarters agreements confer legal immunity and the inviolability of premises and archives. ICRC delegates generally enjoy diplomatic immunity.

[21] Article 1 of the Convention relating to the Status of Refugees (28 July 1951); Article 1 of the Protocol relating to the Status of Refugees (31 January 1967). This definition was expanded by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969), mainly to include persons having fled from armed conflict or disturbances.

Fourth Geneva Convention as aliens in the territory of a party to the conflict (Articles 35 to 46 of the Fourth Convention). This Convention requests *favourable treatment for refugees* on the part of the host country; since, as refugees, they do not enjoy the protection of any government, they must not be treated as enemy aliens solely on the basis of their nationality (Article 44 of the Fourth Convention). Protocol I reinforces this rule while also referring to the protection of stateless persons (Article 73 of Protocol I). Refugee nationals of a neutral State who find themselves in the territory of a belligerent State are protected by the Fourth Convention when there are no diplomatic relations between their State and the belligerent State. Article 73 of Protocol I maintains this protection even when diplomatic relations exist.

The Fourth Convention further stipulates that "In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs" (principle of *non-refoulement*, Article 45, para. 4 of the Fourth Convention).

If, during the occupation of a territory, refugees again fall into the power of a State of which they are nationals, they also enjoy special protection: the Fourth Convention prohibits the Occupying Power from arresting, prosecuting or convicting them, or from deporting them from the occupied territory (Article 70, para. 2 of the Fourth Convention).

However, nationals of a State who flee from armed conflict to the territory of a State that is not taking part in an international conflict are not protected by international humanitarian law,[22] unless this State is beset by internal armed conflict, in which case they are protected by Article 3 common to the Geneva Conventions and by Protocol II. The refugees in question are then the victims of two situations of conflict, one in their own country, and the other in the country receiving them.

4.2 The ICRC's role

The Office of the United Nations High Commissioner for Refugees (UNHCR) plays a role of paramount importance in work on behalf of refugees.

[22] Such situations are frequent, e.g. Afghan refugees in Pakistan and Iran; Iraqi refugees in Iran during the Gulf war; and Rwandan refugees in Zaire, Burundi and Tanzania.

The ICRC considers itself to be directly concerned by the fate of refugees who are *civilian victims of armed conflicts or disturbances*, or of their direct results, i.e. situations covered by its mandate.[23] ICRC action for these refugees depends *inter alia* on their protection under international humanitarian law.

In the case of *refugees covered by humanitarian law*, the ICRC steps in to encourage belligerents to apply the relevant provisions of the Fourth Geneva Convention. At the operational level, the ICRC seeks to obtain access to the said refugees on the basis of this same Convention, and to provide them with any protection and assistance they may need.[24]

As mentioned above, refugees are often *not protected by humanitarian law*, i.e. when the host country is not party to an international armed conflict or is itself not engaged in conflict. In such cases they are protected only by refugee law and benefit from the activities of UNHCR. As a rule, the ICRC then acts only in a *subsidiary* capacity and if it is the sole organization in the area concerned.[25] It withdraws once UNHCR and other organizations take over so that it can carry out tasks more in keeping with its specific role. The ICRC may, however, offer refugees the services of its Central Tracing Agency at any time. It has also developed war surgery programmes for wounded refugees.[26]

The ICRC does, however, feel concerned when refugees encounter major security problems in host countries, particularly when violence or even military operations are directed toward refugee camps near the border.[27] In this case, the ICRC is well placed to perform its role as a

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[23] See Françoise Krill, "ICRC action in aid of refugees", *IRRC*, No. 265, July-August 1988, pp. 328-350.

[24] During the Iran/Iraq conflict, the ICRC thus took care of Iranian refugees in Iraq and even helped with their resettlement in other countries. Following the Gulf war, the ICRC also visited more than 20,000 Iraqis held in the Rafha camp in Saudi Arabia; activities by the ICRC and UNHCR were mutually complementary.

[25] The ICRC intervened on several occasions during the initial phase of an influx of refugees, e.g. in the following cases: Iraqi Kurd refugees in Iran at the end of the Gulf war (1991); Rwandan refugees in Goma (Zaire) and Ngara (Tanzania) in 1994. When UNHCR was not present, the ICRC looked after Mozambican refugees in South Africa and Iranian refugees in Iraq during the Iran/Iraq war.

[26] For example, hospitals for Afghan refugees in Peshawar and Quetta (Pakistan), and for Cambodian refugees in Thailand.

[27] For example, the ICRC launched an extensive operation in aid of Cambodian refugees on the Thai-Cambodian border. See René Kosirnik, "Droit international humanitaire et protection des camps de réfugiés", in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, ICRC/Geneva; Martinus Nijhoff Publishers, The Hague 1984, p. 387 ff.

neutral and independent intermediary, and has *concurrent competence* alongside that of UNHCR. With regard to security problems arising in refugee camps particular note should be taken of two factors: the location of such camps in dangerous areas close to the border where they are exposed to hostilities, and the presence of combatants in the camps. International humanitarian law provides some solutions to these problems, though it must first be respected.

When both the ICRC and UNHCR are competent to take action, work by the two organizations is carried out in a spirit of complementarity. Concerted efforts and close coordination result in optimum assistance for victims.

Attention is drawn here to the important role played by the National Red Cross and Red Crescent Societies and their Federation in assistance operations for refugees.

The *repatriation of refugees* is another area of considerable concern to the ICRC. Although it generally does not engage in such operations,[28] the ICRC considers that the States and organizations involved must carefully check that the time and conditions for the refugees' return are right. Owing to its good knowledge of the refugees' country of origin, it can analyse the situation and make recommendations to ensure that refugees return home safely and in dignity. On several occasions the ICRC has warned against the risk of over-hasty repatriations in unstable areas or places where the infrastructure has been destroyed.[29]

The problem of landmines must be borne in mind here, with their devastating injuries that most of all affect the civilian population. These mines not only constitute a reason for displacement, they also seriously impede the reconstruction of war-stricken countries and represent a major obstacle to the return of refugees and displaced persons. The ICRC is of the opinion that only a total prohibition of anti-personnel mines can put an end to this scourge.

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[28] The ICRC does, however, supervise large-scale repatriations, of prisoners of war in particular, such as those that took place between Iraq and Iran in 1990 (approximately 79,000 prisoners), and between Saudi Arabia and Iraq in 1991 (approximately 80,000 prisoners). The ICRC always ensured that each prisoner of war was willing to be repatriated.

[29] The ICRC has spoken out in particular against the repatriation of refugees to Afghanistan, Cambodia, Croatia, Bosnia-Herzegovina and Rwanda. As regards Cambodia, see ICRC Memorandum of 14 November 1990, partially reprinted in Frédéric Maurice and Jean de Courten, "ICRC activities for refugees and displaced civilians", *IRRC*, No. 280, January-February 1991, pp. 9-21.

5. Persons displaced within their own country

5.1 Protection under international humanitarian law

As previously seen, during armed conflict the civilian population is entitled to an immunity intended to shield it as much as possible from the effects of war. Even in time of war, civilians should be able to lead as normal a life as possible. In particular, they should be able to remain in their homes; this is a basic objective of international humanitarian law.

However, when civilians are forced to leave their homes owing to serious violations of international humanitarian law, they are still *a fortiori* protected by this law. This protection may come from the law applicable either to international or to internal armed conflicts, as both types of conflict may result in displacements of people within their own country.

The protection to which displaced persons, as civilians, are entitled in the event of *displacements due to international armed conflict* is set forth in considerable detail (Protocol I, for example, dedicates a major section to it — Articles 48 ff.). The civilian population is also entitled to receive items essential to its survival (Article 23 of the Fourth Convention; Article 70 of Protocol I). The same holds true for the population of occupied territories (Articles 55 and 59 ff. of the Fourth Convention; Article 69 of Protocol I). In addition, the civilian population cannot be deported from occupied territory.[30] Generally speaking, the civilian population enjoys the fundamental guarantees stipulated in Article 75 of Protocol I.

Civilians *fleeing from an internal armed conflict* enjoy protection very similar to that during international armed conflicts. Although the fundamental principles of this protection have been clearly spelt out, it must be admitted that the rules are less specific. Owing to the predominance nowadays of internal armed conflicts, a fairly detailed description will be given here of the relevant rules.[31]

Article 3 common to the four Geneva Conventions is the cornerstone of this protection. Although very short, it contains essential principles.

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[30] Article 49 of the Fourth Convention: the Occupying Power may, as an exception, undertake evacuations "if the security of the population or imperative military reasons so demand. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".

[31] See Denise Plattner, "The protection of displaced persons in non-international armed conflicts", *IRRC*, No. 291, November-December 1992, pp. 567-580.

After pointing out that persons taking no active part in the hostilities must be treated humanely in all circumstances, it prohibits the following acts: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the [fundamental] judicial guarantees. The Article also states that the wounded and sick are to be collected and cared for.

These fundamental guarantees are repeated in *Protocol II* which, in addition to the guarantees given in common Article 3, prohibits collective punishments, acts of terrorism, and pillage (Article 4, paras 1 and 2). In addition, the prohibition of outrages upon personal dignity explicitly includes rape, enforced prostitution and any form of indecent assault. Persons deprived of liberty also enjoy additional guarantees (Article 5). Article 6 specifies judicial guarantees, while Articles 7 to 12 stipulate that the wounded and sick, as well as those caring for them, must be respected and protected. Finally, special protection is laid down for women and children (particularly in Article 4, para. 3).

Afterwards, Protocol II stipulates that the civilian population is to be protected from the effects of hostilities (Part IV): "The civilian population...shall enjoy general protection against the dangers arising from military operations" (Article 13). In particular, it must not be the object of attack. Also prohibited are acts or threats of violence intended to spread terror among the civilian population.

In addition, the use of starvation of civilians as a method of combat is prohibited (Article 14). It is also prohibited to attack, destroy or remove objects indispensable to the survival of the civilian population or render them unusable (such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works). Works and installations containing dangerous forces — dams, dykes and nuclear power stations — must not be attacked if such attacks may cause severe losses among the civilian population (Article 15). Cultural objects and places of worship are likewise protected (Article 16).

Protocol II also prohibits *forced movement of civilians*. Such displacements may be carried out only if required for the security of the civilians involved or for imperative military reasons. When such is the case, all possible measures must be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition (Article 17). Although not expressly stipulated, it is understood that such movements may be only temporary.

Finally, whenever the civilian population is deprived of supplies essential for its survival (such as foodstuffs and medical supplies), relief actions "of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction" are to be undertaken with the consent of the State concerned.[32]

As regards the conduct of hostilities, in 1990 the International Institute of Humanitarian Law at San Remo adopted a "Declaration on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts". It contains general principles on the conduct of hostilities as well as rules on the use of certain weapons.

Thus international humanitarian law adopts a global approach aimed at safeguarding the civilian population as a whole. The fact that population displacements are only rarely mentioned does not mean that legal protection is lacking. On the contrary, compliance with the law should help to prevent such displacements.

Evidently there will never be such a thing as 'total' legal protection; even if every rule of international humanitarian law were respected, population displacements would still take place.[33] However, respect for the rules would make it possible to avoid most displacements resulting from war, which is at present the main cause thereof.

It is consequently essential that States not yet party to the Geneva Conventions and their Additional Protocols should accede to these instruments, and that belligerents should fulfil their obligations and scrupulously apply the rules they have solemnly undertaken to respect.

The obligation to spread knowledge of humanitarian law, in particular among the armed forces but also among the population at large, can never be overstressed. *Instruction in the rules of international humanitarian law is a major preventive measure.*

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[32] Article 18, para. 2 of Protocol II. When these conditions exist, the State must in principle give its consent. As regards relief actions under humanitarian law, see Denise Plattner, "Assistance to the civilian population: the development and present state of international humanitarian law", *IRRC*, No. 288, May-June 1992, pp. 249-263.

[33] The civilian population can suffer collateral or incidental damage loss (see Article 51, para. 5 and Article 57, para. 2 of Protocol I). Attacks are prohibited, or must be stopped, if the loss of human life among the civilian population would be excessive in relation to the concrete and direct military advantage anticipated (principle of proportionality).

5.2 The ICRC's role

The whole problem of internally displaced persons calls for a dual response from the ICRC: first, as promoter and guardian of international humanitarian law and, second, as an operational agency providing protection and assistance to victims of armed conflicts and internal disturbances.[34]

By combining approaches to belligerents to promote respect for the law with its operational activities in the field, the ICRC above all seeks to create conditions whereby the civilian population can remain in their homes whenever possible, in safety and dignity. *Prevention* is thus a major aspect of its work. The magnitude of population displacements is evidence of how arduous such a task is, and how difficult it is to diminish the arbitrary treatment of civilians and the excesses committed against them. Humanitarian action nonetheless plays a significant role, helping to curb wanton violence and prevent the situation from deteriorating further.

As victims of armed conflicts or disturbances, internally displaced persons unquestionably come under the mandate of the ICRC. They consequently enjoy the general protection and assistance it affords to the civilian population, which can be briefly summed up as follows:[35]

— protection of the civilian population; respect for international humanitarian law and humanitarian principles;

— visits to persons deprived of their freedom;[36]

— emergency medical assistance and rehabilitation (war surgery, orthopaedics, support for medical facilities, etc.);

— assistance in public health programmes, particularly as regards the supply of drinking water;

— emergency food aid and other assistance to cover basic needs (e.g. material to make shelters, hygiene products, the distribution of seed, and agricultural tools and fishing tackle, livestock vaccination);[37]

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[34] See Maurice and de Courten, *op. cit.*

[35] See Harroff-Tavel, *op. cit.*

[36] The purpose of these visits is to verify the detention conditions and the treatment of detainees. In 1994, the ICRC visited more than 99,000 persons held in 2,470 places of detention in 58 countries.

[37] In 1994, the ICRC distributed 167,000 tonnes of supplies of all kinds in 45 countries.

— activities to restore contact among family members separated by war or disturbances, or to facilitate their reunification.[38]

The ICRC also offers its services to facilitate communication between parties to conflict (e.g. by passing on messages of a humanitarian nature) or the conclusion of humanitarian agreements (e.g. special agreements to extend the applicability of international humanitarian law to an internal armed conflict, or to make it possible to evacuate the wounded).

For the ICRC the concepts of protection and assistance are closely linked and even inseparable.[39]

Most of the ICRC's work for displaced persons is carried out during armed conflicts. Thanks to its recognized right of initiative and its neutral and independent status, the ICRC is often best placed to take action during hostilities, i.e., in situations where the dangers and consequently the humanitarian needs are the greatest. Its specific nature and virtually permanent contacts with all parties to conflict generally enable it to obtain access — whether in government territory or in areas held by armed opposition groups — to the victims it is mandated to protect and assist. It cooperates as much as possible with National Red Cross and Red Crescent Societies.

Recent ICRC activities in aid of displaced persons, particularly in Rwanda and Chechnya, have been considerable. In *Rwanda*, the ICRC has cared for more than one million civilians, most of them displaced persons.[40] In *Chechnya*, the ICRC has assisted hundreds of thousands of people, many of them displaced. In both cases, as in general, its activities were not confined to these groups of people but formed part of a whole range of efforts on behalf of the civilian population.

Questions may arise as to the advisability of recourse to measures intended to improve protection of the civilian population, in particular displaced persons, against hostilities. The creation of *special protected*

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[38] In 1994, the Central Tracing Agency delivered 7,721,650 Red Cross messages to and from separated family members.

[39] See Jean-Luc Blondel, "Assistance to protected persons", *IRRC*, No. 260, September-October 1987, pp. 451-468.

[40] The ICRC's material aid, essentially in food and agricultural rehabilitation, is also directed toward the particularly vulnerable members of the local population and, as the need arises, toward returnees. The ICRC also carries out the following work in Rwanda: visits to persons deprived of liberty; restoring family ties, particularly by registering unaccompanied children; rehabilitation of the drinking water supply system; and basic medical programmes.

zones has thus been proposed, such as those provided for in international humanitarian law[41] or inspired by it. Practical experience has shown, however, how difficult it is to set up such areas, and especially to ensure their safety, which requires strict control over the area and therefore a considerable deployment of personnel. It has also shown that a safety zone will be all the more effective when it has been accepted by all parties concerned. Moreover, a protected zone that has been imposed on the parties fails to meet the requirements of international humanitarian law. The *ICRC* has managed — in cases of extreme urgency and with the consent of all parties — to render limited areas neutral by placing them under its own control.

Great caution must be taken when creating safety zones, for they tend to create a false sense of security among those they are meant to protect. In certain cases, they may also have the undesired effect of placing those outside the zone in even greater danger, detracting from the effectiveness of the international humanitarian law which is destined to protect the civilian population as a whole, without discrimination.

Care should also be taken to ensure that such measures do not limit the right of displaced persons to leave their country and request asylum abroad.

6. The International Red Cross and Red Crescent Movement

Any description of activities to assist refugees and displaced persons must also take into consideration the work of the Movement's other components, namely the National Red Cross and Red Crescent Societies and the Federation. The Movement has in fact adopted a specific policy for these two categories of people.

The Movement's concern for them dates back a long time. However, it was not until 1981, at the 24th International Conference of the Red Cross

[41] As regards protection of civilians, see Article 14 of the Fourth Convention ("Hospital and safety zones and localities"), Article 15 of the Fourth Convention ("Neutralized zones"), Article 59 of Protocol I ("Non-defended localities"), and Article 60 of Protocol I ("Demilitarized zones"). For a more detailed study of the matter, see Yves Sandoz, "The Establishment of Safety Zones for Persons Displaced within their Country of Origin," presented at the Multi-choice Conference on International Legal Issues arising under the United Nations Decade of International Law, Doha, Qatar, 22-25 March 1994.

held in Manila, that the role of the Movement was clearly defined for the first time, with the adoption of a resolution and a 10-point "Statement of Policy" (Resolution XXI and Annex). Of particular note therein is a general appeal to the Movement to help refugees, displaced persons and returnees. It is also specified that all action undertaken must be in strict accordance with the Fundamental Principles of the Movement.

In addition, the components of the Movement are invited to cooperate with UNHCR and other institutions and organizations working on behalf of refugees. Provision is made for consultations with UNHCR and for the coordination of activities to ensure that efforts will be complementary. In order to ensure consistency in the Movement's work, National Societies are expected to inform the ICRC and/or Federation of any negotiations likely to lead to an agreement with UNHCR. The ICRC and/or Federation should be associated with the Society in the negotiations and concur with the terms of agreement.

This Statement of Policy also demonstrates the specific protection the ICRC offers as a neutral and independent institution. Furthermore, the role of its Central Tracing Agency is stressed; in cooperation with National Societies, the agency seeks to facilitate the reunification of dispersed families, the exchange of family news and the tracing of missing persons.

The 25th International Conference, held in Geneva in 1986, reaffirmed the role of the Movement in aid of refugees, displaced persons and returnees (Resolution XVII), as did the Council of Delegates[42] at its 1991 meeting in Budapest (Resolution 9), and in 1993 in Birmingham (Resolution 7). The Resolution adopted in Birmingham "invites the components of the Movement, in accordance with their respective mandates...to continue to act vigorously in favour of refugees, asylum-seekers, displaced persons and returnees".

The Movement's efforts in favour of displaced persons are centred around the specific roles of each of its components. Respect for these roles, in a spirit of complementarity, is indeed the best guarantee for effective action. The Statutes of the Movement and the Agreement concluded in 1989 between the ICRC and the League (now known as the Federation) provide the general framework for the various activities. Broadly speaking, the assignment of tasks is as follows:

[42] The Council of Delegates is the statutory body where the components of the Movement meet to discuss matters which concern the Movement as a whole.

— In situations of armed conflict, and whenever the presence of a specifically neutral and independent institution is necessary, the ICRC assumes the general direction of the operation;[43]

— In situations of peace, the Federation coordinates the relief work of the National Societies following any major disaster.[44]

A large number of National Societies have now set up major programmes for refugees, displaced persons and returnees, often with the support of the Federation. Many of these Societies act as implementing agencies for UNHCR or other United Nations organizations. Such cooperation must be guided by the Movement's Fundamental Principles, a requirement which is all the more important in a world where neutral and impartial action is in constant danger of politicization.

7. Current challenges

The problem of population displacements, whether the people concerned are refugees or persons displaced within their own country, presents a big challenge for the international community. Aspects concerning displaced persons will be considered here.[45]

First of all there is the important work being carried out by Mr Francis Deng, Representative of the UN Secretary-General on Internally Displaced Persons.[46] Input on this subject has been provided by the Human Rights Commission, the UN Department of Humanitarian Affairs,[47] UNHCR, the Centre for Human Rights and many non-governmental organizations, some of which have been assigned the task by Mr Deng of investigating certain legal[48] and institutional[49] aspects of the phenom-

[43] Article 5, para. 4 of the Statutes of the Movement; Articles 18 and 20 of the 1989 Agreement.

[44] Article 19 of the 1989 Agreement.

[45] The current number of displaced persons is estimated to be around 25 million, or even more, although the concept of 'displaced person' is not clearly defined. The causes of displacement vary widely: armed conflict, disturbances, repression, natural disasters, socio-economic conditions, and infrastructural projects (e.g. dams).

[46] See in particular his latest report to the Commission on Human Rights, dated 2 February 1995 (ref. E/CN.4/1995/50).

[47] The Department of Humanitarian Affairs has created an inter-agency work group on displaced persons.

[48] The *Lugwig Boltzmann Institute* for Human Rights (Austria), the *American Society of International Law* and the *International Human Rights Law Group* (United States).

[49] *The Refugee Policy Group* (United States) and the *Norwegian Refugee Council* (Norway).

enon of displaced persons. Many States are also joining in. As the subject is of great importance to the ICRC, it is taking an active part in the debate as well, in particular through dialogue with the Representative of the Secretary-General.[50]

Careful consideration by the international community of how to address the growing problem of displaced persons is essential. Present efforts to increase awareness are commendable, valuable as they are in drawing attention to a matter of serious humanitarian concern. Current ideas on the subject are reviewed below.

To begin with, what should be done to improve *humanitarian action* on behalf of displaced persons? In view of the large numbers and vast needs of these people, greater cooperation between the humanitarian agencies, particularly UN bodies and non-governmental organizations, is of paramount importance. This cooperation must be increased in a spirit of complementarity and must take their respective mandates into account. To be truly neutral and impartial, humanitarian action must moreover be independent of all political and military considerations, for only then is it possible to reach all victims.[51] States must also recognize that humanitarian action has its limits; although indispensable, it is but a temporary remedy for problems that can be solved only by political means, with assistance from the international community when required.

The question then arises as to a possible *development of the law*. This is a delicate matter, for there are already many legal regulations, and, when new rules are created (e.g. a convention on displaced persons), care must be taken not to undermine the existing law. Another moot point is the advisability of creating rules aimed solely at protecting displaced persons, which could result in discrimination against other victims who also deserve to be protected. The traditional humanitarian law approach, based on needs arising from a given situation (armed conflict), therefore appears preferable to an approach centred on specific categories of people in every situation.

Proposals intended to reaffirm certain essential principles and rules of humanitarian law and human rights law in order to improve protection of displaced persons must on the other hand be encouraged, provided that

[50] See the ICRC's reply November 1992 to Mr Deng which is reproduced in this issue of the *IRRC*, pp. 181-191.

[51] See *Code of conduct for the International Red Cross and Red Crescent Movement and non-governmental organizations (NGOs) in disaster relief.*

the existing law is upheld and not weakened (there has been talk of a set of principles, a code of conduct or a declaration). It is true that in situations not covered by international humanitarian law, existing law perhaps does not yet provide optimum protection for the civilian population, and consequently for displaced persons, although the power to waive certain human rights at times of exceptional public danger is limited. It should be noted that population displacements are mentioned in Article 7 of the Turku Declaration.

In general, however, efforts by the international community should be concentrated first and foremost on *improved implementation of international humanitarian law* by all belligerents. This should help to bring about a considerable reduction in the number of displaced persons and refugees.[52]

Jean-Philippe Lavoyer was born in 1950 in Berne (Switzerland), where he obtained his degree as a barrister in 1976. From 1984 to 1988, he was an ICRC delegate in South Africa, Somalia and Afghanistan. After three years with the ICRC's Legal Division in Geneva, he was assigned to Kuwait (1991-1994). He has now rejoined the Legal Division, and continues to carry out regular missions, particularly for the purpose of disseminating international humanitarian law.

[52] In an effort to increase respect for humanitarian law, in 1993 the Swiss Government, at the ICRC's suggestion, organized the International Conference for the Protection of War Victims. The next International Conference of the Red Cross and Red Crescent, to be held in Geneva in December 1995, will also discuss measures to be taken to increase this respect.

The ICRC and internally displaced persons

In 1992, the United Nations Commission on Human Rights adopted a resolution on persons displaced within their own countries, pursuant to resolution 1991/25 on the same subject, whereby the United Nations Secretary-General was requested to gather the views of governments and of the intergovernmental and non-governmental organizations concerned and to report to the next session.

Mr Francis Deng, subsequently appointed Special Representative of the Secretary-General on internally displaced persons, asked the ICRC for its opinion on the matter. The ICRC's reply, given in November 1992, remains valid today and is reproduced below in a slightly modified form.

1. Introduction

According to the four Geneva Conventions of 1949 and the 1977 Protocols additional thereto, the mandate of the International Committee of the Red Cross (ICRC) applies in both international and non-international armed conflict situations. The States party to the Geneva Conventions have also recognized the ICRC's right to propose activities in behalf of victims of internal strife, by adopting the Statutes of the International Red Cross and Red Crescent Movement (Article 5, para. 2d, of the Statutes).

For the purposes of this article, therefore, the ICRC will confine its considerations to situations of armed conflict and internal strife, it being understood that international humanitarian law applies only to armed conflict situations.

2. Causes of displacement of persons

Whenever military operations are not confined to the front line, they are liable to cause population movements. However, the ICRC has observed that violations of international humanitarian law very frequently lead to population displacements, or exacerbate the phenomenon.

For instance, civilians flee combat zones on account of indiscriminate attacks by belligerents. Or, subjected to harassment and caught in the firing line between the belligerents, they attempt to escape the abuses of power of which they are the victims. When they move, they lose access to their normal sources of supply. This may in itself be a primary cause of famine; or famine may develop because the belligerents do not take the necessary steps to allow the delivery of relief to these persons. When belligerents deliberately impede the delivery of relief supplies essential to the survival of the civilian population, their conduct runs counter to international humanitarian law, in particular the provisions prohibiting the use of starvation of civilians as a method of warfare (Articles 54 of Protocol I and 14 of Protocol II). Such impediments to the delivery of relief may in turn cause further population displacements.

The indiscriminate use of landmines must also be taken into consideration when analysing the causes of the displacement of civilians during armed conflict. Indeed, mines kill 800 people each month, most of them women, children and farmers. According to conservative estimates, there are still 85 to 100 million mines lying in wait in 62 countries. Even under ideal conditions, when the layout of minefields is known and is even mapped, it takes a hundred times as long to remove mines as to lay them. By cutting farmers off from their fields, landmines force them to leave their villages and thus they swell the ranks of persons displaced by war.

Authorities faced with a non-international armed conflict may decide to transfer a civilian or group of civilians from one place to another within the national territory. In this case, the authorities' decision complies with international humanitarian law only if the security of the civilians involved or imperative military reasons (our underlining) so demand. Even then, the decision is in line with humanitarian standards only if all possible measures are taken "*in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition*" (Article 17(1) of Protocol II).

Violations of international law may be the cause of large-scale population movements and at the same time betray a deliberate policy on the part of the authorities to provoke such movements. In any event, a policy

involving mass displacement of groups of population, like the policy of "ethnic cleansing", is not consistent with respect for humanitarian law. It should be noted in this connection that Article 3 common to the four Geneva Conventions forbids parties to a conflict to have recourse to discriminatory treatment founded on "*race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*".

Although organization and discipline among combatants are liable to enhance respect for humanitarian law, it must be stressed that the provisions of common Article 3, which are applicable to all types of armed conflict,[1] and particularly non-international armed conflict, lay down rules of conduct which stem from the duty to act humanely and which do not require any particular legal or political mechanism for compliance. To avoid any further regression of the minimum standards of civilization, such compliance must continue to be demanded at all times.

3. Needs of displaced persons

Human dignity is generally very severely affected by the fact of having to leave one's home on account of events associated with armed hostilities or other forms of violence, because of the utter dependence in which the displaced persons then find themselves. States should therefore adhere to a policy designed to *prevent displacements*. For this, much greater importance will have to be attached to respect for humanitarian law.

States at peace should — as indeed they are required to do by the Geneva Conventions — spread knowledge of the humanitarian rules, notably on account of their educational value, which is at least on a par with that of the rules of human rights. For countries affected by an armed conflict, efforts should focus on restoring the resolve of political and military leaders to respect the minimum standards of humanity which the Geneva Conventions endeavour to preserve. Securing respect for humanitarian law should be seen as a necessary step towards the restoration of a peace which will not be undermined by the memory of disproportionate suffering. Attention should also be given to situations which are not governed by a protective regime such as that provided by humanitarian

[1] See Judgment by the International Court of Justice in the case concerning military and paramilitary activities in and against Nicaragua, Reports of Judgments, Advisory Opinions and Orders, p.104, para. 218.

law, firstly because humanitarian law does not apply in such cases and furthermore because the international law of human rights is often suspended, at least partially, by the use of derogation clauses.[2]

In summary, the prevention of displacements calls for rules which would avert, or at least limit, population movements, an implementation system geared to the problems which those rules are intended to solve (see section 5 below), and a policy on the part of States allowing the rules to produce the desired effects.

The ICRC has in any event observed that the needs of displaced persons go much further than mere material relief. Action must be taken ahead of displacements. Its purpose must be to shelter people from the hostilities, not by displacing them but by making sure that military operations comply with the restrictions laid down by law. It must combat all conduct which violates the identity of a population group by abuses of power contrary to the rules of international law. In non-international armed conflict, special agreements between the parties may raise standards of behaviour and offer solutions derived from the law applicable to international armed conflicts.

Humanitarian law applicable to non-international armed conflicts does not make any provision for protected areas such as the hospital and safety zones mentioned in Article 14 of the Fourth Geneva Convention and the neutralized zones mentioned in Article 15 of the same text. The question arises whether the establishment of similar zones should not be encouraged in situations of internal armed conflict. The main problem is obtaining the cooperation of the authorities concerned; otherwise such zones are frequently subject to attacks, with often tragic results for the persons whom they are supposed to protect. It is therefore difficult to advocate general solutions; their relevance must be examined on a case-by-case basis, taking the specific circumstances into account. Similar difficulties arise when attempts are made to reserve for exclusively humanitarian purposes communication channels used for the transport of relief supplies (humanitarian corridors). In practice this is almost impossible. The establishment of such corridors can furthermore have negative effects on areas other than those they serve. Any proposed solution must therefore be carefully examined in terms of its advantages and disadvantages in the given context.

[2] See the "Declaration of Minimum Humanitarian Standards" published in the *International Review of the Red Cross*, No. 282, May-June 1991, p. 330 ff. This Declaration was circulated within the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 12 August 1991as Document No. E/CN.4/Sub.2/1991/55, and in 1994 was submitted by resolution to the Commission with a view to its finalization and possible adoption.

In regard to the phenomenon of displaced persons, therefore, the ICRC believes that a combined protection and assistance strategy is required. The provision of relief, intended to help people survive by meeting their most urgent needs, should never be regarded as a substitute for efforts to eradicate the causes of displacement, through representations to the civilian and military authorities and practical activities in the field. In addition, all possible steps must be taken, when launching a relief operation, to avoid creating a state of dependence and to help the people receiving assistance to regain their self-sufficiency.

4. Law applicable to displacement of persons within the national territory

International humanitarian law protects the victims of international and non-international armed conflicts. The four Geneva Conventions of 1949 and Additional Protocol I, in addition to customary law, apply to international armed conflicts. Article 3 common to the four Geneva Conventions of 1949, and Additional Protocol II, as well as the relevant customary rules, apply to non-international armed conflicts. At 31 December 1994, 185 States were parties to the Geneva Conventions of 1949, 135 to Protocol I and 125 to Protocol II.

As internally displaced persons are in principle civilians, they are protected before, during and after their displacement by all the rules that protect civilians in an armed conflict situation.

Nowadays, most such situations are non-international in nature. On account of their characteristics — no front line, combatants mingling with the population, breakdown of political, economic and social structures, etc. — these situations are more likely to cause population movements than are international armed conflicts. In addition, in international armed conflict situations, it often happens that the States at war impose restrictions on the movements of people residing on their territory.

Nevertheless, displacements can occur within the national territory of a State which is party to an international armed conflict.

A State may have to face, within its borders, clashes which reach the intensity of an internal armed conflict; this conflict will then be superimposed upon the international armed conflict. In such circumstances, the humanitarian problems causing or resulting from population movements will have to be dealt with in part by application of the rules relating to non-international armed conflicts. Article 75 of Additional Protocol I,

which, within the framework of an international armed conflict, applies to anyone affected by such a situation, may also cover some of the problems that can arise in the context described above.

If the international armed conflict is not accompanied by a non-international armed conflict, then only the rules applicable to international armed conflict will come into play.

For the sake of clarity, a distinction has to be drawn between the rules applicable to international armed conflicts (A) and those applicable to non-international armed conflicts (B).

A. Rules applicable to international armed conflicts

It should be pointed out first of all that humanitarian law governing international armed conflicts contains a large body of *rules applicable to the conduct of hostilities* (see Part II of the Fourth Geneva Convention and Parts III and IV of Protocol I).

One of these provisions, Article 54 of Protocol I, prohibits starvation of civilians as a method of warfare. Paragraph 2 of the provision states that it is prohibited "*to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive*" (our underlining).

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect *the prohibition of forcible transfers* laid down in Article 49 of the Fourth Geneva Convention.

In its relations with persons protected under the Fourth Geneva Convention (see Article 4 of that Convention and Article 73 of Protocol I), a State party to an international armed conflict must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to their safety*, laid down in Part II and Sections I and II of Part III of the Fourth Geneva Convention.

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to*

their safety, laid down in Part II and Sections I and III of Part III of the Fourth Geneva Convention.

In its relations with persons who are not protected persons under the Fourth Geneva Convention but are affected by the situation, a State party to an international armed conflict must respect *all the rights specified in Article 75 of Protocol I.*

Pursuant to Articles 23, 55 and 59 ff. of the Fourth Geneva Convention and Articles 68 ff. of Protocol I, *the civilian population*, whether in an occupied territory or on the national territory of a belligerent State, and even when the latter is subjected to a blockade, *must be provided with supplies essential to its survival.* These supplies must, if necessary, be delivered to them by international relief operations. Neither the States implementing the blockade, nor the enemy State, nor the Occupying Power may oppose relief actions intended to provide the civilian population with supplies essential to its survival and which comply with the requirements laid down under humanitarian law, and in particular the stipulation that relief actions must be humanitarian, impartial and non-discriminatory. The Fourth Convention also provides, in Articles 108 ff., for relief shipments to civilian internees.

Women, children, the elderly and the disabled make up most of the civilian population and as such already enjoy the protection of humanitarian law. Moreover, such persons may also fall into the category of the wounded and sick within the meaning of Article 8(*a*) of Protocol I, and as such benefit from all the provisions of humanitarian law which organize protection of the wounded and sick in time of war.

Finally, Articles 76 and 77 set out some of the many specific measures which States must take to ensure special protection for women and children.

B. Rules applicable to non-international armed conflicts

A closer look should be taken at the various points mentioned under A above.

Like the law relating to international armed conflicts, that relating to non- international armed conflicts contains *rules applicable to the conduct of hostilities.*[3]

[3] See, on this point, Denise Plattner, "The protection of displaced persons in non-international armed conflicts", *International Review of the Red Cross*, No. 291, Nov.-Dec.1992, pp. 567-580, pp. 570-571.

As in the rules applicable to international armed conflict, starvation of civilians as a method of combat is also prohibited in non-international armed conflict, in the following terms:

> "*Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works*" (Article 14 of Protocol II).

Forced displacements are covered by Article 17(1) of Protocol II.

Political and social rights, whether relating to judicial guarantees or to the manner in which non-combatants or persons hors de combat *are to be treated, to their physical integrity and to their safety*, stem from Article 3(1) common to the four Geneva Conventions and Articles 4, 5, 6, 14 and 18 of Protocol II.[4] Thus, as regards inhumane treatment alone, 23 types of conduct are specifically prohibited, as, for example, murder, torture, collective punishments, taking of hostages, acts of terrorism and threats to commit such acts.

Article 18(2) requires the government in power to accept *international relief operations*, even for the population under opposition control, if that population lacks the supplies essential for its survival and the relief operations are of an exclusively humanitarian and impartial nature and are conducted without any adverse distinction.[5] Article 18(2) of Protocol II is the equivalent of Article 70 of Protocol I, which is applicable to international armed conflicts. In both provisions it will be seen that the State concerned does not have discretionary power to accept or refuse relief operations in favour of a population other than the one it controls, but is under an obligation to accept them when the operations are indispensable and are conducted in such a way as to ensure that they serve exclusively humanitarian purposes.

As in international armed conflicts, *women, children, the elderly and the disabled* are protected by the rules in favour of persons not participating directly in the hostilities. In addition, they may benefit from the provisions relating to the protection of the wounded and sick contained in Article 3(2) common to the Geneva Conventions and Articles 7 to 12

[4] *Ibid.*, p. 571.

[5] *Ibid.*, p. 573.

of Protocol II. Articles 4(3), 5(2)(*a*) and 6(4) of Protocol II also reflect the principle of the special protection due to women and children.

5. Implementation of international humanitarian law

The suffering experienced by displaced persons must not undermine faith in the rules whose violation has prompted the displacements. Humanitarian law has the strengths and weaknesses of international law, of which it is an integral part. The difficulties that are encountered in implementing it justify an examination of the reasons for which humanitarian law is still inadequately respected and of ways and means of securing more effective application of its rules. *The ICRC therefore believes that efforts should focus on improving respect for international humanitarian law rather than on the establishment of new rules for the specific category — moreover very difficult to define — of displaced persons.* As stated in section 3 above, the needs of displaced persons have to be addressed before, rather than after, their displacement occurs. Such needs have to be tackled as a whole, and not solely in relation to the phenomenon of displaced persons.

States have entrusted the ICRC with the task of ensuring faithful application of international humanitarian law and providing the victims of armed conflicts with protection and assistance (see Article 5(c) and (d) of the Statutes of the International Red Cross and Red Crescent Movement, adopted by International Conferences of the Red Cross and Red Crescent at which the States party to the Geneva Conventions are represented). The terms and conditions under which the ICRC is able to fulfil its various duties differ, however, according to whether the situation is one of international or non-international armed conflict.

In an *international armed conflict*, the ICRC may be appointed as a substitute for the Protecting Power (see Articles 10/10/10/11 of the four Geneva Conventions, respectively, and Article 5 of Additional Protocol I). Whether or not it is appointed as such, the ICRC is entitled in any event to have access to persons protected by the Fourth Geneva Convention, wherever they may be, and to talk to them without witnesses (Article 143 of the Fourth Geneva Convention, which is the equivalent of Article 126 of the Third Geneva Convention, relating to prisoners of war). Finally, the ICRC enjoys a right of initiative which permits it to undertake, with the consent of the authorities concerned, any other activity to protect or assist civilians (Article 10 of the Fourth Geneva Convention).

In *non-international armed conflicts*, the activities undertaken by the ICRC are founded on the right of initiative which it enjoys under Article 3(2) common to the Geneva Conventions. That article allows it to offer its services to the parties to a non-international armed conflict. In practice, it is fortunately very rare for States to reject the ICRC's proposals, with the result that the institution is now active on the scene of virtually all internal hostilities, carrying out the activities entrusted to it by virtue of the Statutes of the International Red Cross and Red Crescent Movement.[6]

The United Nations bodies competent in the human rights area may be led to contribute, in certain contexts, to the implementation of international humanitarian law. It should however be borne in mind that, in armed conflict situations, respect for the rules protecting civilians against the causes or effects of their displacement can ultimately be secured only by permanent close relations with the government in place, regular contacts with all the factions concerned - contacts that in no way entail international recognition of those factions - and practical activities on behalf of the victims of the armed conflict.

The status of neutral intermediary thus appears indispensable for implementation of the rules protecting civilians against the causes or effects of their displacement in an armed conflict situation.

In the field, cooperation with the organizations on the spot is very often necessary in order to avoid duplication in relief work. For the same purpose, the ICRC follows with great interest the efforts undertaken under United Nations auspices to improve coordination of the activities of agencies within the United Nations system and of certain non-governmental organizations and, while considering it essential to retain its independence, consults those responsible for such coordination with a view to establishing a concerted approach. *Cooperation and concerted approaches do not, however, imply an overlapping of mandates, and any fragmentation of the legal mechanisms set up to secure respect for international humanitarian law should be avoided, just as much as any fragmentation of the basic rules. It is essential that the ICRC be able to fulfil fully and effectively its role as custodian of the rules designed to limit human suffering in times of armed conflict.*

That being said, the humanitarian agencies can play a part in the implementation of international humanitarian law whenever they bring

[6] *Ibid.*, p. 574.

assistance to victims of armed conflict in accordance with the principles of humanity, impartiality and non-discrimination which, by virtue of the Statutes of the International Red Cross and Red Crescent Movement, the ICRC is duty bound to respect in all circumstances.

The contribution of the Emperor Asoka Maurya to the development of the humanitarian ideal in warfare

by the late Professor Emeritus
Colonel G.I.A.D. Draper, OBE*

Gerald Draper (1914-1989) was the foremost specialist in humanitarian law of his generation in the United Kingdom, and was well-respected in the law of war community worldwide. He was a Military Prosecutor in the war crimes trials in Germany after the Second World War, and following his retirement from the Army Legal Staff became a distinguished academic, finishing as Professor of Law at the University of Sussex. Draper was a delegate to many International Conferences of the Red Cross as well as to the Diplomatic Conference which drafted the Additional Protocols of 1977.

Professor Colonel Draper had a special interest in the development of the law of war, and in inter-faith dialogue. His interest in Emperor Asoka perhaps reflected his own belief in universal humanitarian principles transcending different traditions. Asoka's specific relevance to contemporary international humanitarian law may be seen in his concern for conquered "border peoples" living under what might now be termed "occupation"; the impartiality of humanitarian provision extending to all peoples, including those of other religions and cultures; and the recog-

* Collated and edited with some revision by Michael A. Meyer, Charles Henn and Hilaire McCoubrey from Professor Draper's notes for a lecture on "The Contribution of the Emperor Asoka Maurya to the Early Development of the Humanitarian Approach to Warfare", which he delivered on 29 November 1982 at Chulalongkorn University in Bangkok, Thailand; and from his notes for a lecture on "The Emperor Asoka Maurya and the Establishment of the Law of Piety", which he delivered on 1 December 1982 at the Siam Society in Bangkok.

nition of the need for personnel to monitor and supervise the implementation of the publicized norms. Asoka, like Draper, was concerned both with moral values and with the pragmatic exigencies of human life and misfortune.

An edited collection of selected works of Gerald Draper on the law of war, entitled ***Reflections on Law and Armed Conflict,*** *is being prepared for publication.*

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A. The Maurya Empire: significance

The Maurya Empire forms part of India's past and marks a unique phase in its brilliance and splendour. It lasted for over a century (321-185 BC) and is to be regarded as one of the great civilizations of all time. Apart from its magnificence, and despite the controversy and uncertainty surrounding many of the actions and achievements of its rulers, this empire and, in particular, one of its rulers, are historically significant in their remarkable moral and humanitarian legacy to mankind.

B. Emergence and establishment

The Maurya Dynasty (321-185 BC) emerged following the withdrawal of Alexander the Great from India in 325 BC, when the dynasty's founder, Emperor Chandragupta, seized the throne of the Nanda Dynasty at Magadha (South Bihar), the leading kingdom of Upper India at the time. After Alexander's withdrawal from India, Chandragupta defeated Alexander's General, Seleucus Nicator, and a vast area of the territory originally conquered by Alexander in India was ceded to Chandragupta by the General in return for five hundred elephants. The cession was followed by the conclusion of a treaty of alliance and friendship, and eventually the General and the Emperor cemented their friendship by intermarriage between their families.

One outcome of this treaty of alliance and friendship was the sending of a Greek ambassador, Megasthenes, by Nicator to Chandragupta's court. During his residence, Megasthenes wrote detailed reports of life at the

court and of the organization of the Maurya Empire. Unfortunately his reports are lost, but fragments of them are repeated in other Greek writings which have survived. Through them, some precious details of the Maurya Dynasty, the Royal Court, the capital city and the remarkable system of government of the empire are known.[1]

Chandragupta reigned for twenty-four years (321-297 BC) before abdicating his throne in favour of his son, Bundusara. His system of government continued under Bundusara, who left no noticeable mark upon the empire. Bundusara was succeeded by his son, Asoka, in 273 BC, although, as was usual, Asoka was not consecrated as Emperor until 265 BC.

The system of government founded by Chandragupta lasted for about ninety years (322-231 BC). It was an absolute monarchy — a case of pure despotism — with the seat of government in Patiliputra (modern Patna), which, according to Megasthenes, was a city of dazzling magnificence. The Maurya Empire was roughly commensurate with that of British India of the early 20th century, but excluding the territory below Madras and excluding what is now Sri Lanka. The standing army was enormous: in Asoka's time, it consisted of 600,000 infantry, 130,000 cavalry, and 9,000 elephants attended by 36,000 men, together with many thousands of chariots and charioteers, all strictly controlled by six different boards of government. The size of this force must be remembered when considering the scale of the warfare of the day, and the casualties and losses that could result. With an army of this size at his disposal, Asoka's power was absolute.

C. Emperor Asoka's conquest of the Kalingas and subsequent remorse

With the capability for waging war that he inherited and augmented, Asoka defeated the three Kalinga kingdoms (modern Orissa) in about 256 BC — the sixteenth year of his reign and the eighth after his consecration. Historical evidence — consisting of little other than the surviving thirty-four edicts[2] — does not reveal why he went to war with the

[1] It is known, for example, that Chandragupta relied much upon his trusted adviser, a Brahmin Minister of State — one Chanakya — who had been a perfume seller. The latter rendered the Emperor considerable assistance and skill in devising the Maurya system of government.

[2] These consist of fourteen rock edicts, seven minor rock edicts, two Kalinga edicts, seven pillar edicts and four minor pillar edicts.

Kalingas. However, one of his edicts — the famous Thirteenth Edict or "Rock Edict", also known as the "Conquest Edict", of 257 BC —, declared that the victory was overwhelming and losses among the defeated peoples were particularly devastating: his army took 150,000 people captive and slew 100,000, and many times that number died in the conquest.[3]

> ***" . . . one hundred and fifty thousand persons were . . . carried away captive, one hundred thousand were . . . slain, and many times that number died . . . [I]f the hundredth part or the thousandth part were now to suffer the same fate, it would be a matter of regret. . .".***
> From Edict XIII, circa 257 BC.

Asoka was at pains to declaim in this edict that the casualties, privations and suffering of the defeated Kalingas caused him "profound sorrow" and "regret", "because", he said,"the conquest of a country previously unconquered involves the slaughter, death and carrying away captive of the people. That is a matter of profound sorrow and regret to His Sacred Majesty". [4] No note of elation can be detected in the edict, and no attempt was made to vindicate his military action or the resulting carnage: the silent moral premise was that all destruction of life, human and animal, and all suffering and privation — no matter how small the scale — are regrettable and to be avoided.[5]

There was, however, another reason for Asoka's feeling of "still more regret", he said, "inasmuch as the Brahmins and ascetics, or men of other denominations, or householders who dwell there, and among whom these duties are practised, to wit:— harkening to superiors, harkening to father and mother, harkening to teachers and elders, and proper treatment of (or courtesy to) friends, acquaintances, comrades, relatives, slaves and servants, with steadfastness of devotion — to these befall violence (or injury) or slaughter or separation from their loved ones. Or violence happens to the friends, acquaintances, comrades, and relatives of those who are

[3] See Edict XIII, also known as the "Rock Edict" or the "Conquest Edict", circa 257 BC.

[4] From Edict XIII, circa 257 BC.

[5] " . . . One hundred and fifty thousand persons were . . . carried away captive, one hundred thousand were slain, and many times that number died [in the conquest of the Kalingas] . . . So that of all the people that were then slain, done to death . . . if the hundredth part or the thousandth part were now to suffer the same fate, it would be a matter of regret to His Sacred Majesty". — From Edict XIII, circa 257 BC.

themselves well protected, while their affection (for those injured) continues undiminished. Thus for them also that is a mode of violence and the share of this [violence] distributed among all men is a matter of regret to His Sacred Majesty, because it never is the case that faith in some one denomination or another does not exist".[6]

In this edict, Asoka discloses a truly remarkable degree of religious tolerance and of heightened sensitivity to the suffering — even indirect suffering — of all, especially of the righteous, regardless of their religion or denomination.[7] For a mighty Emperor who had only recently won a major victory in war, these are very noble and enlightened sentiments; although, realistically, such sentiments would be of little avail if he did not have absolute power over his peoples.

D. Conversion to Buddhism and the inculcation of the Law of Piety

From the time of his victory over the Kalingas in 256 BC, and the consequent remorse, until the end of his reign in 232 BC, Asoka never waged another war. Indeed, in the years following his victory, he spent time piously retracing the steps of the Buddha and raising stupas inscribed with moral injunctions and imperatives at holy places of pilgrimage; and for some two years he became a member of a Buddhist order without relinquishing his role as Emperor.

His conversion to Buddhism, effected with the help of his own teacher, Upragupta, was gradual. Even though he did little to change the system of government he inherited, he introduced a novel and powerful moral idealism — a moral rule or "way of life" in the Buddhist sense as he understood it — which he called the "Law of Piety". This law, though following the tenets of the Buddha, was distinct from them and peculiar to Asoka. It was to become one of the great turning points of the civilization of the East, having profound effects throughout the neighbouring kingdoms, not least in India itself and in Sri Lanka, and reaching China and Greece.

[6] From Edict XIII, circa 257 BC.

[7] This is a combination of two Buddhist ideas: first, it is a greater sin to kill or inflict suffering upon a holy or a good person than it is to kill or inflict suffering upon an evil person; secondly, all religions teach people to be good, so there must be no religious persecution [eds.].

The Law of Piety consisted in moral imperatives requiring that reverence be paid to all to whom it was due, especially to one's superiors, parents, teachers, elders and relations. The imperatives of the Law of Piety required that respect be shown for the sanctity of all animate life, human and animal; they also required humane and just treatment of all, including backward and uncivilized peoples both inside and outside the empire. There were injunctions and prohibitions against vices such as envy, indolence and injustice in relation to and affecting the administration of the empire. In short, the imperatives and prohibitions of the Law of Piety formed a network of righteous relationships between all sentient and animate beings, affecting public, social and familial relationships, and affecting relationships between peoples of different levels of development and between humans and animals. No one was outside its ambit, not even Asoka or the Empress: censors were appointed to ensure that the Law of Piety was observed even in the latter's apartments in the Palace. The Law of Piety was a moral law, an imperial law, a law governing foreign relations and a way of life. At the epicentre of the network was Emperor Asoka himself, who assumed the burden of ensuring the publication and enforcement of this Law.[8]

The Law of Piety disseminated by Asoka throughout his empire and beyond was not a reasoned moral system; it lacked coherence and the intellectual order normally expected of such a system. In this regard, Asoka cannot be compared with the philosophers of classical Greece. No developed dogma or cogent philosophy can be found in his edicts, neither can any theology, except the implicit acceptance of a world other than that of the material, as revealed in the statement, *inter alia*, that he "regards as bearing much fruit only that which concerns the other world";[9] and the implicit acceptance of the Law of Piety as possessing transcendental validity, as revealed in his statement that, after he had annexed the kingdoms of the Kalingas, he began his "zealous *protection* of the Law of Piety, his love of that Law and his inculcation of that Law".[10]

Asoka drew a comparison between conquest by force of arms and the conquest of the Law of Piety: he called the latter — the conquest of man's heart by the Law of Piety — "the true conquest", quite unlike military

[8] See, in particular, Edict I, circa 256-255 BC; Edict II, circa 256-255 BC; and Edict XIII, circa 257 BC.

[9] From Edict XIII, circa 257 BC.

[10] *Ibid.*

conquests. "Delight", he said, "is won in the conquest of the Law . . . for this purpose has the scripture of the Law been recorded, in order that my sons and grandsons, who may be, may not think it their duty to make a new conquest. If, perchance, a conquest should please them they should take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety. That avails both for this world and the next. . .".[11]

> ***"Delight is won in the conquest of the Law [of Piety] . . . [F]or this purpose has the scripture of the Law been recorded, in order that my sons and grandsons . . . may not think it their duty to conquer [militarily] . . . If, perchance, a conquest should please them they should take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety".***
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> From Edict XIII, circa 257 BC.

His officials were strongly urged to see that justice was done in the administration of the law, so the humanitarianism of the Law of Piety undoubtedly had a salutary effect on State practices. However, the improvement was relative. The severe criminal law, for example, was not amended, except for the provision that a person condemned to death had three days between sentence and execution for pious meditation and for charitable works by friends. Torture remained normal practice, though Asoka cautioned that sentences must be passed for just causes only: "[If] it happens that some individual incurs imprisonment or torture and when the result is his imprisonment without due cause, many other people are deeply grieved. In such a case you must desire to do justice . . . For this purpose has the scripture been here inscribed in order that the administrators of the town may strive without ceasing that the restraint or torture of the townsmen may not take place without due cause".[12] Taxation also remained high, at one-quarter of produce and sales.

The dissemination and inculcation of this Law were carried out by edicts, which were inscribed in beautiful Pali calligraphy upon rock surfaces and pillars of polished sandstone. Thirty-four of them have survived. These edicts stood by the great highways of Asoka's empire so

[11] *Ibid.*

[12] From Edict II, "The Provincial's Edict: The Duties of Officials to the Provincials", circa 256-255 BC.

that all who journeyed through his lands could be edified by their message. Their evident repetition was not an oversight, but a reflection of his resolve to inculcate these inflexible principles and to ensure that they were deeply imprinted in the hearts of all who read them.

It is apparent from the texts of the edicts that Asoka was determined to use to the full the resources at his disposal and the powers of an absolute monarch and despot to proclaim and enforce the Law of Piety. The very despotism that enabled him to lead his army to victory also enabled him to establish a new moral order in his empire and to see to its observance. There is no reasoning, no premise, no invocation of any gods in the edicts: it was sufficient that the calamity suffered by the defeated Kalingas inspired "profound sorrow and regret" in Asoka and led him to introduce a new moral order — one that he had no need of explaining or defending to the reader of the edicts. While he indubitably thought on a universal scale and propounded moral values of great nobility, the system rested upon pure despotism: his imperatives and injunctions were both the law and the complete way of life for his people and the special charge of his officials, on whom there were tremendous despotic pressures to pursue the course he prescribed.

Public officials administering the towns were exhorted by Asoka to carry out his principles assiduously on pain of incurring his displeasure. He pointed out the nexus between bad government and officials who fell short in their observation of the Law of Piety; and he made it clear that he would brook no idleness or injustice, let alone any obstruction of his endeavours. The tenor of the edicts indicates that there were some officials who did not fully heed his moral instructions, and that there were others who defaulted owing to "certain natural dispositions [which] make success . . . impossible, to wit, envy, lack of perseverance, laziness, indolence". There is evidence, too, that the moral principles expressed in Asoka's Law of Piety met with some opposition in his empire.[13] Evidently

[13] "Whatsoever my views are I desire them to be acted on in practice and carried into effect by certain means. And in my opinion the chief means for this purpose are my instructions to you, because you have been set over many thousands of living beings that you may gain the affection of good men . . . You, however, do not grasp this truth to its full extent. Some individual, perchance, pays heed, but to a part only, not the whole. See then to this, for the principle of government is well established . . . it happens that some individual incurs imprisonment or torture and when the result is his imprisonment without due cause, many other people are deeply grieved. In such a case you must desire to do justice. However, with certain natural dispositions success is impossible, to wit, envy, lack of perseverance, laziness, indolence. You [the officials] must desire that such dispositions be not yours. The root of the whole matter lies in perseverance and patience in applying

the aspirations were too high and the manifold changes expected of human conduct were too abrupt.

Asoka also exhorted his officials with promises of reward and threats of sanctions, both in this world and in the next, to administer with justice and patience those beyond the pale — those recently brought under his rule by the annexation of the three Kalinga kingdoms and the "unsubdued border-dwellers". Such officials, he said, "are in a position to make these people trust [him] and to ensure their prosperity both in this world and in the next . . .". The aim was compassionate administration and to have them, too, observe the Law of Piety:

"'All men are my children'; and, just as I desire for my children that they may enjoy every kind of prosperity and happiness both in this world and in the next, so also I desire the same for all men.

"In regard to the unsubdued borderers . . . the King desires that they . . . should not be afraid of [him], that they should trust [him] . . . the King will bear patiently with [them] and that for [the King's] sake they should follow the Law of Piety and so gain both this world and the next.

"By instructing and intimating my will, my inflexible resolve and promise, I [the King] shall be provided with (trained) local officials for this business, because you are in a position to make these people trust me and to ensure their prosperity both in this world and in the next, and by so doing, you may win heaven and also effect my release from debt.

"And for this purpose has this scripture of the Law of Piety been written here, in order that the High Officers may strive without ceasing, both to ensure the confidence of these borderers and to set them moving on the path of piety . . . ".[14]

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this principle of government. The indolent man cannot rouse himself to move, yet one must needs move . . . In the same way you must see to your duty, and be told to remember: — 'See to my commands; such and such are the instructions of His Sacred Majesty.' Fulfilment of these bears great fruit, non-fulfilment brings great calamity. By those who fail neither heaven nor the Royal Favour can be won. Ill performance of this duty can never gain my regard, whereas in fulfilling my instructions you will gain heaven and also pay your debt to me . . . For this purpose has the scripture been here inscribed in order that the administrators of the town may strive without ceasing that the restraint or torture of the townsmen may not take place without due cause. And for this purpose . . . I shall send forth in rotation every five years such persons as are of mild and temperate disposition, and regardful of the sanctity of life, who knowing that this is my purpose will comply with my instructions . . .." From Edict II, "The Provincial's Edict: The Duties of Officials to the Provincials", circa 256-255 BC.

[14] From Edict I, "The Borderers' Edict: The Duties of Officials to the Border Tribes", circa 256-255 BC.

Even those well and truly beyond the pale — the "forest folk" — were not excluded from just and humane treatment and the benefits of the Law of Piety. Upon "the forest folk in his dominions", Asoka said, he "looks kindly, and he seeks to make them think (aright) for (otherwise) repentance would come upon His Sacred Majesty. They are bidden to turn from their (evil) ways that they be not chastised. Because His Sacred Majesty desires for all animate beings security, control, peace of mind and joyousness".[15]

In these edicts, relating to the duties of officials in regard to the border tribes and forest folk, Asoka can be seen as, at once, a despot, a moral reformer, a missionary and a teacher of a way of life; the edicts reveal a sense of universality of affection for all people — an early form of humanitarianism which is not limited to war.

It is also clear from the edicts that he sent large numbers of missionaries to places as far afield as Greece and China, "among all his neighbours as far as six hundred leagues, where the king of the Greeks named Antiochos dwells, and to the north of that Antiochos (where dwell) the four kings named severally Ptolemy, Antigonos, Megas, and Alexander (likewise) in the south, the Cholos and Pandyos as far as the Tamraparni river — and here, too, in the King's dominions — among the Greeks, Kambojas, the Nabhapantis of Nabhaka; among the Bojas, Pitinikas; Andhras and Pulindas — everywhere they follow the instruction of His Sacred Majesty in the Law of Piety. Even where the envoys of His Sacred Majesty do not penetrate, these people, too, hearing His Sacred Majesty's ordinance based upon the Law of Piety and his instruction in that Law, practise, and will practise the Law".[16] As well as all the neighbouring States and the remainder of India not governed by him, Asoka's missionaries brought Sri Lanka into the Buddhist fold.

One of the most radical of Asoka's reforms was the almost total prohibition on hunting and slaying of animals for food. He abolished the tradition in the royal kitchen of slaughtering one peacock each day. Even the famous Royal hunting parties, during which the complete Royal Court, the harem, the officials and servants went to hunt for several weeks, were curbed. For these hunts, large areas of the forest were marked off with coloured ribbons for the royal progress; all strangers found within the limits of the royal route were liable to the death penalty, probably, as was

[15] From Edict XIII, circa 257 BC.

[16] *Ibid.*

ordinary criminal practice, preceded by mutilation. Asoka stopped these and all other hunting expeditions because animal life, like human life, was sacred. He went so far as to provide for the establishment of hospitals on the highways of his empire for the care of sick and injured people *and* of their beasts of burden. In typical Asoka fashion, edictal orders were issued for his officials to enforce the hunting prohibitions at the same time as they were instructed to observe, and to monitor the observance of, other aspects of his Law of Piety. This prohibition of animal slaughter corresponded to Asoka's moral revulsion for human slaughter in warfare and his subsequent abhorrence of any killing and suffering.

The intensity of Asoka's moral fervour in these edicts is as evident as his officials' failure in implementing them. Such lofty moral instructions could not have been easily carried out. Asoka continued to uphold and ensure the implementation of his Law of Piety until the end of his reign; his undistinguished descendants, however, were unable to sustain his moral mission and the Law of Piety lost its vigour. After his death in 231 BC the empire was divided, its power declined and the Law of Piety passed into history.

The Maurya Dynasty under Emperor Asoka's idealism underwent a profound moral transformation at court, in official life, and in the basis of all relationships throughout his extensive dominions and beyond. It witnessed the elevation of Buddhism from a sect in India to one of the great religions of the world, affecting and becoming part of the course of history of Sri Lanka, Burma, Thailand, Japan, Tibet and, to a lesser extent, China. In unfolding humanitarian principles Emperor Asoka's pioneering and precocious ideals and his lofty moral legacy, transcending place and time, rank him among the foremost moral teachers and among the greatest civilizing influences in human history.

E. Emperor Asoka: fact and legend

Historical evidence relating to Emperor Asoka's life and words consists of legends and the texts of the thirty-four edicts, inscribed on rock surfaces, which have survived. There is little else.

Of Asoka's early career it is known, for example, that before he became Emperor, during the lifetime of his father, Bundusara, he held the important office of Viceroy of Vyjirin, the main provincial capital. This was the normal practice of the Maurya Dynasty — one to be expected

in an absolute and despotic monarchy — whereby the prince was groomed and given an apprenticeship by his father.

Knowledge of Asoka's later career is derived principally from the thirty-four edicts. While they do not disclose the reason for war with the Kalingas, the "Conquest Edict" does announce his victory over them and his subsequent remorse and "protection" of the Law of Piety. Other edicts issue instructions for implementation and enforcement of this Law and record his dispatch of missionaries and his pious retracing of the footsteps of the Buddha. Beyond this, there is little historical information.

Not enough evidence has survived to allow the development of the Law of Piety and its contents to be traced. It is clear that Buddhist ideas must have played a major part in the moral order which Asoka chose to govern his way of life and that of his empire, but as the Law of Piety is obviously not a crib from Buddhism, the question — the unanswerable question — arises regarding the extent to which his experience of the conquest of the Kalingas determined the nature and content of his moral ideas, as contradistinguished from the main canon of Buddhism.

Some legends surrounding Asoka's life and works are inconsistent with other historical evidence. In Sri Lanka, for example, unsubstantiated legends depict him as an evil man who secured the death of his brothers. While fables of an evil early life could be true, as they would not be inconsistent with his gradual and undramatic adoption of Buddhism and the slow movement towards the Law of Piety which is seen in his edicts, doubts remain about the verity of these legends owing to the lack of corroborating historical evidence. However, it is also thought that stories of fratricide and other legends were fabricated to impress upon his subjects the power he held over them as a despot, as well as to impress upon them the innate goodness which made him susceptible to feelings of horror, followed by remorse and regret, when he witnessed the bloodshed of war, rather than feeling joyful at the victory of his army. His moral stature was elevated by his evident transcendence of evil and his transformation into an Emperor of lofty principles after the defeat of the Kalingas. In themselves, these legends probably grew out of the desire to enhance and exaggerate which was common to the legend-history of the era.

F. Conclusion

Emperor Asoka was one of the great moral reformers in the history of civilization and a precocious pioneer of humanitarian values. The

impetus for his humanitarian work was derived from his gradual conversion to Buddhism following his witnessing of the carnage and suffering in a war in which his army was victorious. A bold and original reformer who thought on a universal scale and propounded moral values of great nobility, he never claimed to be the inventor of those moral principles; indeed, he took them to be self-evident truths of transcendental validity that stood without need of religious or metaphysical support. They were derived from Buddhism but were distinct from it, and unique to him. The Law of Piety prescribed essentially but not exclusively reverence for superiors; compassion for the ignorant, the suffering, the backward and all living creatures; and acceptance of the goodness of those belonging to other faiths and religions. In short, the Law prescribes righteous relationships between all, including a righteous relationship between the Emperor himself (and his Empress) and others.

Asoka was primarily concerned with the pragmatic and daily affairs of mankind, holding that those same principles that guide righteous conduct in the affairs of this world will bring forth benefit in the next. His edicts made no reference to "nirvana" or "karma", yet it is clear that the other world was as important as, if not more important than, this one.

Defects in his moral ardour are apparent: the Law of Piety was both the morality and the law — the complete way of life — for all, and was enforced using all the despotic means at Asoka's disposal throughout his empire. He brooked no resistance; and any lack of enthusiasm in observing the Law incurred his displeasure. Humanity in the administration of the criminal law was not apparent, although in relation to previous regimes there was less brutality.

Comparison with other notable converts reveals Asoka's true stature. Unlike Pharaoh Akhenaton of the 18th Dynasty (14th century BC), Asoka was not a mere believer: he was active and relentlessly pursued the effective dissemination and observance of his Law of Piety. Some writers have compared Asoka with Constantine the Great and with St. Paul in that he was a combination of an Emperor convert and the foremost missionary of his special form of Buddhism. However, Asoka never underwent a dramatic, traumatic experience or conversion such as that of St. Paul on the road to Damascus. The analogy with Constantine the Great is false. Constantine did not cease to wage wars after the Edict of Milan of 313 AD, nor was he the author of Christianity; in fact he was a late and hesitant convert to Christianity. There were already many Christians in the Roman Empire before Constantine promulgated the Edict. Constantine, in a word, came late and slowly to the Christian faith. By

contrast, Asoka boldly established his own Law of Piety, and used his position as an absolute monarch to impose it upon his subjects. A similarity exists between the two Emperors in that both of them made their religious and moral beliefs the official religion and morality of their respective empires. There was nothing of the missionary or pioneering moral teacher in Constantine, but such were the attributes for which Asoka will be remembered. The comparison of Asoka with Constantine the Great is by way of contrast: Asoka stands out in history as a mighty missionary Emperor and a moral teacher of a stature greater than was ever achieved by Constantine the Great.

More significant, in the present context, than his legacy of a just and more humane administration of a very large empire, his assiduous dissemination of lofty moral values and Buddhism, and his vigorous cultivation of heightened moral sensitivity among his subjects and officials, is his legacy to the humanitarian ideal in warfare; for the ultimate humanitarian ideal in warfare is that it should not happen. After witnessing the sufferings of the defeated Kalingas, Asoka found he could not reconcile the Buddhist tenet of the sanctity of all animate life with recourse to war, so much so that he even terminated the tradition of the Royal Hunt and, indeed, banned the killing of animals. He never again engaged in a military campaign and he sought, through edicts permanently inscribed on rock surfaces, to deter his sons and grandsons from so doing and urged them to "take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety".[17] Respect for all living creatures was not peculiar to Asoka, but its nexus with warfare was a novel moral teaching. Conquest in war was replaced by the conquest effected by the Law of Piety; and the ultimate good towards which all must strive was decreed to be the conquest of this Law. This startling thought, transcending time and place, was nothing less than a precocious realization of humanitarian values in the Indian sub-continent in the middle of the third century before Christ. The distinguishing features of the Law of Piety — that war should be abhorred; that heightened sensitivity to the suffering of others, including animals, should be cultivated; that lofty and religiously neutral but universal moral values which transcend different religions should be diligently pursued and realized — give Asoka a valid claim to being a precocious, pioneering and dedicated advocate of the

[17] *Ibid.*

humanitarian principles which today characterize the regimes of human rights and the humanitarian law of war.

"... [I]n as much as ... men of other denominations, or householders who dwell there, ... among whom these duties are practised, to wit, harkening to superiors, harkening to father and mother, harkening to teachers and elders, and proper treatment of friends, acquaintances, comrades ... servants, with steadfast devotion — to these befall violence or slaughter or separation from their loved ones. Or violence happens to the friends, acquaintances, comrades and relatives of those who are themselves well protected, while their affection for those injured continues undiminished. Thus for them also that is a mode of violence; and the share of this [violence] distributed among all men is a matter of regret to His Sacred Majesty, because it never is the case that faith in some one denomination or another does not exist". — From Edict XIII, circa 257 BC.

From the end of the Second World War to the dawn of the third millennium

The activities of the International Committee of the Red Cross during the Cold War and its aftermath: 1945-1995

by François Bugnion

A field of ruins

8 May 1945: *Victory Day!* An exhausted Europe emerged with relief from six years of oppression and carnage.

And yet there was no sign of the profound, immediate and spontaneous joy which had followed that earlier victory on 11 November 1918. The continuing war in Asia, combined with the deep rifts left behind by collaboration, the discovery of mass graves and the horror of the concentration camps, the immensity of the mourning and the destruction, and widespread concern for the future all held the people back from yielding freely to the headiness of restored peace.

Moreover, illusions had been lost: the armistice signed at Rethondes had been hailed as the victory of right over force, of the will to peace over the violence of war. The new system of international relations within the framework of the future League of Nations was to exclude forever any return to the endless slaughter from which the world had just emerged.

But there was none of that in May 1945: everyone understood the fragility of the Grand Alliance which had vanquished the Nazi hydra. As soon as Hitler was dead, the variances between the victors reappeared.

The Red Cross was less able than any other institution to succumb to euphoria. It had been in contact with too much suffering not to rejoice

at the return of peace. But even though the Red Cross had managed to build up its activities to a spectacular extent throughout the six years of war, and despite its undoubted successes, it had come too close to the victims not to be aware of its own setbacks.

Everywhere in the world, the National Red Cross and Red Crescent Societies had been at the forefront of the struggle against suffering: they effectively supported the armed forces' health services; they organized health care behind the lines; they assisted convalescents and helped the families of soldiers killed in action; in many countries, they supported, and sometimes even replaced as best they could social services disrupted by war. Even in occupied Europe, the National Societies had managed to continue their relief work within the narrow limits imposed on their activities by the occupation authorities.

Throughout the conflict, the International Committee of the Red Cross was the linchpin of relief action for prisoners of war. The Central Agency for Prisoners of War, with the help of the services of over 3,000 volunteers, was able to restore a vital link between prisoners and their families; ICRC delegates travelled the world over to assist prisoners and to monitor the conditions in which they were held captive; from its headquarters in Geneva, the ICRC set up such a vast relief operation that it became the largest civil transport undertaking during that period. Its relief work in Greece with the support of the Swedish government was decisive in helping to save the country's population from starvation. And yet, despite these unprecedented achievements, despite the Nobel Peace Prize awarded to it for the second time in December 1944, the ICRC came under attack as soon as the fighting ceased. It was held responsible for the tragic fate of the Soviet prisoners of war, over half of whom died in captivity; it was also blamed for not denouncing racial persecutions and the hell of the concentration camps, the full horror of which the world discovered after the collapse of Nazi Germany.[1]

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[1] On the ICRC's work in the Second World War, see: *Report of the International Committee of the Red Cross on its Activities during the Second World War*, 1 September 1939 - 30 June 1947, Geneva, ICRC, 1948, 3 volumes + annexes.

On the ICRC's activity on behalf of the victims of Nazi persecutions, see: *The work of the ICRC for Civilian Detainees in German Concentration Camps from 1939-1945*, ICRC, Geneva, 1975; Jean-Claude Favez, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Editions Payot, Lausanne, 1988; Arieh Ben Tov, *Facing the Holocaust in Budapest, The International Committee of the Red Cross and the Jews in Hungary, 1943-1945*, Henry Dunant Institute, Geneva, 1988; Jacques Meurant, "The International Committee of the Red Cross: Nazi persecutions and the concentration camps", *International Review of the Red Cross*, No. 271, July-August 1989, pp. 375-393.

Reconstruction

From the Atlantic to the Volga, Europe was laid waste by the movements of armed forces, by the bombing and by the destruction. Massacres were innumerable; crops and food stocks were destroyed, so hunger was rife everywhere, but especially in Germany, in Eastern Europe and in the Balkans.

Nevertheless, the victors did not wait until the end of the war to prepare for the post-war period and to plan reconstruction. In 1943, the Allies set up an ad hoc body, UNRRA, for the purpose of organizing and coordinating huge relief programmes for the stricken populations. From 1947 on, the Marshall Plan gave a fresh impetus to reconstruction work, enabling Europe — or at least Western Europe — to emerge from depression much more quickly than had been expected.

The National Societies played an active part in this vast relief and reconstruction operation. They looked after returning former prisoners of war, deportees and refugees, and helped with the resettlement of war disabled. Several of them, and especially the American Red Cross, undertook magnificent relief programmes for populations which had suffered most from war and occupation, notably in France, Belgium, the Netherlands, Poland, Yugoslavia and Greece.

The International Committee, in accordance with its mandate, did its best to help the victims of the aftermath of war, giving priority to those who could expect little help from the relief organizations set up by the Allies, because they were on the side of the defeated: German prisoners of war, whose ranks were dramatically swollen as a result of the unconditional surrender, people of German origin uprooted in large numbers from countries of Central and Eastern Europe, and the German population which had come in its turn to taste the bitterness of defeat and the rigours of occupation.

Although the ICRC's efforts to help the defeated were undoubtedly in keeping with the Fundamental Principles of the Red Cross, which require it to provide assistance impartially and to give priority to the most urgent cases of distress, it was not understood. At a time when the world was realizing the sheer monstrosity of the persecutions which had been perpetrated under the Hitler regime and at a time when the populations of other countries were finally emerging from the nightmare of occupation, how could the ICRC's desire to bring assistance to German prisoners of war, who were held collectively responsible for the crimes committed by Nazi Germany and the most blameworthy of whom were about to be

prosecuted as war criminals, be considered admissible? Accusations swiftly followed and some, like the Soviet government, went as far as demanding the outright abolition of the ICRC.

But not only governments were pointing an accusing finger: within the Movement itself the Alliance of Red Cross and Red Crescent Societies of the USSR, backed by the Yugoslav Red Cross, advocated doing away with the International Committee and transferring its functions to the League of Red Cross Societies. Count Bernadotte, Chairman of the Swedish Red Cross, proposed modifying the composition of the ICRC to bring in representatives of all the National Societies. Others suggested attributing executive tasks to the Standing Commission elected by the International Conference of the Red Cross, which would then be placed above both the ICRC and the League.

Faced with these accusations, the International Committee tried to regain its position in three ways.

In the operational field first of all, the ICRC not only continued to provide assistance to the victims of the Second World War, but it also came to the help of the victims of the new conflicts breaking out around the world, such as the civil war in Greece, the Indonesian conflict, the Indochina war, the first conflict between India and Pakistan, or the first between Israel and the Arabs. Whereas the ICRC was able only to conduct very limited activities in Greece, Indonesia, Indochina and Kashmir, its work in Palestine developed considerably, enabling it to fulfil its traditional role as a neutral intermediary between belligerents. The ICRC made sure to give as much publicity as possible to the activities of its delegates and the results obtained, especially for the protection of hospitals, the creation of security zones, the exchange of family news, the protection of prisoners and assistance to refugees. In this way, the ICRC wanted to highlight the type of services it could render in its capacity as a neutral intermediary, thereby pointing out the consequences which would be bound to follow for war victims if it ceased to exist.[2]

At the same time, the ICRC was working on the revision of the Geneva Conventions of 27 July 1929, the shortcomings of which had been all too clearly shown up by the war. In fact, it did not wait for the end of hostilities to make known its intention of embarking on this task; in a memorandum

[2] Dominique-D. Junod, *The Imperiled Red Cross and the Palestine-Eretz Yisrael Conflict, 1945-1952, The Influence of Institutional Concerns on a Humanitarian Operation*, Kegan Paul International, London (to be published shortly).

dated 15 February 1945, it had announced that it was starting consultations to that effect.

In undertaking this revision, the ICRC had three main objectives:

— to extend the protection of the Geneva Conventions to civilians who fall in the power of the enemy;

— to protect the victims of civil wars;

— to add to the new Conventions a monitoring mechanism in which it would itself take part.

The ICRC convened the National Red Cross Societies in 1946, and then a meeting of government experts in 1947. On the basis of those discussions, it prepared four draft conventions, which were approved by the Seventeenth International Conference of the Red Cross, meeting in Stockholm in August 1948, then by a Diplomatic Conference, which met in Geneva at the invitation of the Swiss government from April to August 1949.

On 12 August 1949, the Diplomatic Conference adopted four Geneva Conventions for the protection of:

— the wounded and sick in armed forces in the field;

— the wounded, sick and shipwrecked members of armed forces at sea;

— prisoners of war;

— civilian persons.

These four Conventions contained a common article concerning the protection of victims of armed conflicts not of an international character and instituted supervisory mechanisms by specifying the role of Protecting Powers responsible for safeguarding the interests of the Parties to the conflict. In addition, special provisions recognized the role of the ICRC and confirmed its right of initiative.

For the ICRC, this was a considerable success in that, at a time when the world was deeply divided by the Cold War and the Berlin blockade brought the USSR and the West into open confrontation, the international community had consented to come together to adopt a new humanitarian order.

There remained the problem of re-establishing the unity of the International Red Cross and Red Crescent Movement, which had been strongly affected by the divisions of the Cold War, and to restore the ICRC's position within the Movement which it had founded.

As mentioned above, despite the very great services it had rendered throughout the war, the International Committee became the target of accusations as soon as the fighting abated. Its first concern was therefore to postpone any decision on its composition and its future until the new Geneva Conventions had been adopted. By confirming the mandate entrusted to it by the international community, the Conventions in fact also strengthened its position within the Movement, as the National Societies and the League quickly realized that they could not, without discrediting themselves, oppose the existence and the independence of the ICRC, which had just been endorsed by the new Geneva Conventions as an impartial humanitarian organization. Attacking the ICRC's position was tantamount to casting doubts on the Red Cross and Red Crescent Movement's role in the implementation of humanitarian law, which would have been suicidal.

As for the plans for changing the composition of the ICRC to bring in representatives of the National Societies, it was soon so obvious that a multinational ICRC would inevitably reflect the fault lines of the Cold War and would be paralyzed by divisions within itself that they came to be opposed by the very people who had proposed them in the first place.[3]

Moreover, the ICRC and the League shared a same desire to avoid being placed under the authority of the Standing Commission of the International Red Cross.

They therefore started the task of revising the Statutes of the International Red Cross, which had been adopted by the Thirteenth International Conference of the Red Cross, meeting in The Hague in 1928.

A joint commission of the ICRC and the League prepared a new draft, which essentially preserved the basic structure of the 1928 Statutes and the division of tasks between the two institutions: the League, as the federation of National Societies, kept the main responsibility for the development of member Societies and for coordinating their relief work in peacetime; the ICRC on the other hand remained the guardian of the Movement's Fundamental Principles; it retained responsibility for bringing protection and assistance to the victims of war, civil wars and internal

[3] *"My proposal resulted in lengthy and lively discussions. A special committee was formed which met frequently. In the course of these meetings I greatly revised my original attitude towards the problem [...]. In short, I have become convinced that the International Committee ought to continue in its present form and retain its present composition..."*. Folke Bernadotte, *Instead of Arms*, Hodder and Stoughton, London, 1949, pp. 129-131 and 163-166, *ad* p. 130.

disturbances and was confirmed in its role as a neutral intermediary; it remained in charge of coordinating the international activities of National Societies in times of conflict. In order to carry out these tasks, the ICRC's composition and mode of recruitment by cooption from among Swiss citizens were also confirmed.

Thanks to the new draft Statutes, a split in the Movement was avoided, while the ICRC itself, which was responsible for coordinating Red Cross relief work in the event of armed conflict, maintained a mode of recruitment which ensured that the divisions of the Cold War were not reflected in its composition.

There still remained the hurdle of having these draft Statutes approved by the Eighteenth International Conference of the Red Cross, meeting in Toronto in 1952. On that occasion, however, the ICRC came under strong attack by the governments and National Societies of the Communist countries, which reproached it both for the part it had played during the Second World War and for its activities in Korea, which had been restricted to areas controlled by the United Nations forces as the government of the People's Democratic Republic of Korea had rejected its offers of services.

Finally, the revised Statutes were adopted by 70 votes to 17. The unity of the Movement was preserved, although to a large extent the cracks had only been papered over, as subsequent events were to confirm.

From the Korean war to the fall of the Berlin wall

The Grand Alliance, which was to crush Nazism, was the product of Hitler just as much as that of the Allies themselves. The deep divisions between the USSR and its Anglo-Saxon allies were fully revealed at the Potsdam Conference, which was held amid the smoking ruins of the Third Reich's former capital.

In his famous Fulton speech on 5 March 1946, Winston Churchill noted that *"from Stettin on the Baltic to Trieste on the Adriatic an iron curtain has descended across the Continent"*.[4] This was to stay in place until the fall of the Berlin wall in November 1989.

[4] *Keesing's Contemporary Archives*, 1946, p. 7771.

In a world which was deeply split into two opposing blocs, what courses of action were open to the ICRC?

These varied considerably from one conflict to another. While all the conflicts in this period bore some marks of the Cold War, they were not all affected to the same extent. Some conflicts were a direct consequence of the Cold War, such as the Korean war, which resulted from the division of the peninsula into two occupation zones after Japan's defeat, and to a large extent the wars of Indochina and Viet Nam. Other conflicts were mainly triggered by other endogenous causes, but still reflected Cold War alignments, with one camp looking for support from the West and the other from the USSR and its allies, as in the case of the Arab-Israeli conflicts of 1956, 1967 and 1973. In fact, most of the conflicts of that period reflected such alignments in varying degrees. In a few cases, the belligerents managed to keep clear of the Cold War, as in the conflicts of 1965 and 1971 between India and Pakistan, or the Falkland-Malvinas Islands war in 1982.

The possibilities open to the International Committee largely depended on these different situations. Although they were party to the 1949 Geneva Conventions, the Soviet Union and its allies never really accepted the ICRC's mandate, and even less the fundamental principles of humanity, neutrality and impartiality which it upheld. In the essentially Manichean philosophy of Marxism-Leninism, there is no room for neutrality or impartiality, and there is no question of placing the victims on an equal footing. Between Communism and Capitalism, between "progressive forces" and "reactionaries", the relationship can only be one of opposition, leaving no room for any neutral intermediary.

Regardless of the International Committee's efforts to dissociate itself from the Atlantic bloc — especially on the basic question of banning nuclear weapons — the USSR and its allies always looked upon it as belonging to the bourgeois, capitalistic bloc, in other words, to the enemy.

In those circumstances it was hardly surprising that the ICRC was unable to act as a neutral intermediary either in the Indochina war, or in the Korean war, or in the Viet Nam war, as its offers of services were rejected both by Hanoi and by Pyongyang.

Paradoxically, it was at the time of the Sino-Vietnamese conflict of February 1979 — between two Communist States — that the ICRC's role as a neutral intermediary was again recognized. The ICRC was given access both to Vietnamese prisoners detained by China and to Chinese

prisoners captured by Vietnamese forces, and it helped with their repatriation from both sides.

But it was mainly the relief work in Cambodia which helped to restore the ICRC's image of impartiality within the Communist world.

It may be remembered that the Vietnamese intervention in January 1979 led to the overthrow of the Khmer Rouge regime and to the establishment in Phnom Penh of a pro-Vietnamese government, which was recognized only by the USSR and its allies. Cambodia was in fact in such a devastated condition that the government of Hanoi soon realized that it would be unable to ensure its protégé's recovery. With a great deal of reluctance, Hanoi and Phnom Penh accepted the ICRC's and UNICEF's offers of services. The two institutions set up one of the most extensive relief operations ever carried out, thus decisively contributing to the country's revival. There is no doubt that the ICRC on that occasion managed to overcome the divisions of the Cold War and to fulfil its role as a neutral intermediary between the West - which supplied 99% of the resources needed for the relief work - and the Marxist regime in Phnom Penh.[5]

Nevertheless, the Cold War gave rise for the ICRC to a series of setbacks: it was unable to bring assistance either to French prisoners captured during the Indochina war, or to prisoners of the United Nations forces captured in Korea, or to American prisoners held by the Vietnamese forces. It was not able either to help the civilian populations cruelly affected by war and bombings. For over thirty years, its role as a neutral intermediary and the principles underlying its work were rejected by all the countries of the Communist bloc. Moreover, the ICRC itself never managed to dissociate itself clearly enough from the West on some highly critical issues, such as American bombing in Viet Nam, Laos and Cambodia.

More generally speaking, it has to be admitted that humanitarian law was not much respected during those conflicts, as each of the parties maintained it was waging a just war which relieved it of the need to observe humanitarian rules in dealing with its enemies.

In the same period, other conflicts were not affected by the Cold War to the same degree. That was particularly the case of the various Arab-Israeli conflicts (1948-49, 1956, 1967 and 1973) or the conflicts

[5] William Shawcross, *The Quality of Mercy, Cambodia, Holocaust and Modern Conscience,* Simon and Schuster, New York, 1984.

between India and Pakistan (1947, 1965 and 1971). During these conflicts, the ICRC's position and its role as a neutral intermediary were generally recognized. It was able to transmit the lists of prisoners captured on both sides or to register them itself; its delegates were able to meet prisoners of war and civilian detainees at their places of detention and to talk in private with prisoners of their choosing; they were asked to assist with the repatriation of war-wounded during the hostilities, and with the general repatriation of prisoners at the end of active hostilities. The Central Tracing Agency set up family message services for relatives separated by war and organized countless family reunifications. Lastly, the ICRC set up extensive operations to provide food and medical care for war casualties, prisoners and civilian populations, while coordinating the National Red Cross and Red Crescent Societies' international relief activities for war victims.

It did so in particular during the Hungarian uprising (1956) and the Suez conflict (1956-57), the civil war in the former Belgian Congo (now Zaire) after its accession to independence (1960), the civil war in Yemen (1962-1970), the civil war in Nigeria (1967-1970), the Six-Day War (1967), the civil war in Jordan (September 1970), the third India-Pakistan conflict (December 1971), the Arab-Israel conflict of October 1973, the civil war in Lebanon (1975-1990), the conflicts in Nicaragua (1978-1989) and El Salvador (1979-1990) and many others.

In all these conflicts, the International Committee received the backing of the National Red Cross and Red Crescent Societies. Over and above its specific tasks arising from its role as a neutral intermediary, the ICRC coordinated the relief work of the National Societies. The League took an active part in a number of those operations, while letting the ICRC assume the general direction of international Red Cross and Red Crescent action, in accordance with existing rules.

But new forms of conflict had already appeared, seeking to hasten the demise of the colonial empires. In most cases, the national liberation movements fighting to regain the independence of colonial peoples were not strong enough to oppose the armed forces of the metropolis openly and had to merge with the civilian population to use guerrilla methods.

These new forms of conflict threatened to undermine the very foundations of humanitarian law — and first of all the principle that a distinction must be drawn between combatants and the civilian population — while rendering the ICRC's role as a neutral intermediary problematic since the adversaries employed completely different methods of fighting. Furthermore, the colonial powers long considered the conflicts occurring

in one or other of their colonial territories as purely internal affairs exclusively within their own national jurisdiction.

On the basis of Article 3 common to the four 1949 Geneva Conventions, the ICRC nevertheless offered its services to the parties in conflict. In many cases, for instance during the Algerian war (1954-1962), the war of independence in Kenya (1956) and in the struggles afflicting the Portuguese colonies of Angola and Mozambique, as well as in Rhodesia/ Zimbabwe, Namibia and South Africa, it was able to initiate some major operations, particularly in favour of members of liberation movements captured by the armed forces of the colonial powers.

Beyond the conduct of the ICRC's operational activities, however, these conflicts raised the question of the extent to which international humanitarian law was duly adapted to wars of national liberation and guerrilla warfare. This led to a further revision of humanitarian law.

From the 1949 Conventions to the Additional Protocols

From the time that the new Geneva Conventions were adopted, the ICRC was fully aware of the gap between the "law of Geneva", which had been completely redrafted in 1949, and the rules governing the conduct of hostilities, or "law of The Hague", which had remained unchanged since the Second International Peace Conference in The Hague in 1907.

The question of the protection of civilian populations against the effects of hostilities, for instance, was a particularly burning issue; most of the major cities of Europe and Asia still bore the scars of the bombs dropped throughout the Second World War, and the destruction of Hiroshima and Nagasaki was an ominous indication of what might lie ahead.

The ICRC therefore decided to hold new consultations with experts, after which it drew up a set of Draft Rules designed to limit the dangers incurred by the civilian population in wartime.

The draft was particularly ambitious and is probably one of the most detailed texts ever proposed for the protection of civilian populations. Article 14 of the draft prohibited any use whatsoever of weapons *"whose harmful effects — resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents — could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population"*.[6]

[6] *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*, ICRC, Geneva, September 1956, p. 12.

That amounted to a total ban on the use of atomic weapons. It also led to the failure of the draft rules, for when the draft was submitted to the Nineteenth International Conference of the Red Cross, which met in New Delhi in November 1957, Article 14 was attacked from all sides. The Soviet Union and its allies considered that the ICRC's draft was too timid, because it did not include an overall condemnation of nuclear weapons, whereas the West thought that a ban which was not backed up with any supervisory machinery would be illusory. As the Conference could not, without losing all credibility, summarily dismiss a regulatory draft of obvious humanitarian significance, it adopted a resolution inviting the ICRC to submit its draft to the governments. In fact, the project was scuppered.

That failure was to paralyze any ICRC attempt to develop humanitarian law for many years to come.

A fresh impetus came from elsewhere. Countries which had gained their independence after 1949 resented being bound by humanitarian rules which they had had no part in preparing. Moreover, many held that the Geneva Conventions and, more specifically, the rules relating to the conduct of hostilities, were poorly adapted to the new forms of conflict such as wars of national liberation and guerrilla warfare.

This dual claim for renewed consideration found strong expression within the United Nations, especially at the International Conference on Human Rights, which met in Teheran in 1968.

Fearing that its own responsibility — and that of the International Red Cross and Red Crescent Movement — for the development of international humanitarian law might slip into the hands of a political organization, namely the United Nations, the ICRC took up the task once again and announced that it would initiate a new revision of humanitarian law.

In 1971 and 1972, the International Committee convened two conferences of Red Cross experts and two conferences of governmental experts to that effect.

It was immediately evident that it would be unwise to start hammering at the 1949 Conventions, since it was by no means sure that the international community would be able to agree on new provisions. In fact, the Conventions themselves were not a problem. It was more a question of making good their shortcomings. The natural solution therefore lay in adopting Additional Protocols to them.

The drafts prepared by the ICRC after the consultations of 1971 and 1972 were submitted to the Diplomatic Conference on the Reaffirmation

and Development of International Humanitarian Law applicable in Armed Conflicts, which was convened by the Swiss government as the depositary of the Geneva Conventions. The Conference held four sessions from 1974 to 1977 and adopted two Protocols additional to the Geneva Conventions of 1949: Protocol I to improve the protection of the victims of international armed conflicts, and Protocol II to improve the protection of the victims of non-international armed conflicts.

The main achievement of the Additional Protocols was to codify rules relating to the protection of the civilian population against the effects of hostilities.

The "gap" in the 1949 Conventions, which had been so sharply criticized by the Soviet delegation, was thus filled.

By the kind of paradox which often occurs in history, the provision which had given rise to the most heated discussions and which equated wars of national liberation with international armed conflicts has to this day never been put into practical application.

From the Eighteenth to the Twenty-Fifth International Conference of the Red Cross (1952-1986)

Despite the political neutrality which it recognized as one of its fundamental principles, the Red Cross and Red Crescent Movement was unable to remain unaffected by the divisions and disputes of the Cold War.

That was already apparent at the Eighteenth International Conference of the Red Cross, meeting in Toronto in 1952, where the debates were dominated by the passions unleashed by the Korean war. The following conference, which met in New Delhi in 1957, split shamefully over a purely political question, that of Chinese representation.

Despite the new Statutes of the International Red Cross, adopted in Toronto, the International Red Cross was on the verge of breaking up.

Those divisions made it clear that there was an urgent need to agree on the formulation of a few universally accepted fundamental principles, setting out the main guidelines of the Movement and thus complementing the Statutes, the main purpose of which is to define the relations between its component institutions.

The ICRC and the League therefore set up a Joint Commission, which, making valuable use of the distinguished work of Max Huber and Jean

Pictet, succeeded in drawing up seven Fundamental Principles. These were adopted by consensus by the Council of Delegates, meeting in Prague in 1961, then by the Twentieth International Conference of the Red Cross, meeting in Vienna in 1965.

These Principles really constitute the basic charter of the Movement. Their mandatory nature is recognized by all the Red Cross and Red Crescent institutions and there has never really been any question of revising them. In fact, does not the moral authority of the Fundamental Principles also derive from the recognition they have been granted over a growing period of time?

This basic charter was all the more necessary in that the unity of the Movement continued to be threatened by the divisions of the Cold War.

Strangely enough, it was on the issue of peace that the Red Cross nearly broke apart. Following the line adopted by the Soviet government, the National Societies of the Socialist countries tried to turn the Red Cross into a forum for the denunciation of aggression, for which, by definition, only the "capitalist States" could be responsible. While the Red Cross cannot but condemn a war of aggression, it is equally clear that the Movement cannot label any specific government as the aggressor without creating a rift in its own ranks and without denying its Fundamental Principles. It was also clear, moreover, that the Red Cross could not give an opinion on the origin of armed conflicts without jeopardizing its possibilities of bringing help to the victims.

These initiatives threatened both the League and the ICRC. However, as the League Secretariat could not take sides in a dispute between two groups of member Societies, it was mainly the ICRC, as guardian of the Fundamental Principles of the Red Cross and Red Crescent, which endeavoured with the help of a few National Societies to restore the unity of the Movement. It managed to do this by demonstrating that in order to achieve the necessary credibility, any resolution concerning peace had to be adopted by consensus. The unity of the Movement was thus preserved, and the initiatives were brought back to a common denominator acceptable to all.

The Statutes of the International Red Cross, as revised in 1952 by the Toronto Conference, have successfully passed the test of time and the National Societies of the Socialist countries, which had voted against their adoption because of the role the Statutes assigned to the ICRC, finally gave it their support. In April 1982, however, the League's Board of Governors called for a further revision of the Statutes of the International

Red Cross. The proposed changes were essentially terminological, since the expression "International Red Cross" was replaced by "International Red Cross and Red Crescent Movement", which appeared to be more in line with the principle of the National Societies' equality. On the other hand, the basic structure of the Statutes and the division of tasks among the Movement's components were left unchanged. The revised Statutes were adopted by consensus by the Twenty-Fifth International Red Cross Conference, meeting in Geneva in October 1986.

The International Committee of the Red Cross and the preservation of peace

The Cold War was the result of an ideological confrontation between two economic and political systems which were opposed in every respect. It was reflected in a series of localized conflicts occurring along all the dividing lines between the two blocs, such as in Korea, Indochina, the Near East and southern Africa.

But it was also a continuing rivalry between two military powers — the United States and the USSR — whose nuclear arsenals guaranteed them a superiority that the other States were unable to contest and which possessed ample means of destroying each other and dragging the whole of mankind with them in their mutual annihilation.

For over forty years, the world lived under the constant threat of this collective suicide; gigantic material resources and a wealth of human intelligence were devoted to perfecting those arsenals and to preserving the balance of terror on which the maintenance of peace and the future of mankind depended.

Although the threat of nuclear annihilation was brandished only on rare occasions, such as the Suez conflict and the Yom Kippur war, it was nonetheless a constant factor in the reckoning of strategists and statesmen.

It was during the Cuba crisis in October 1962, however, that the world was really brought to the brink of a third world war when President Kennedy decided to oppose, if necessary by force, the installation in Cuba of Soviet missiles which would have upset the strategic balance between the two blocs and would have constituted a serious threat to American cities. To begin with, the United States President blockaded the island and ordered United States naval forces to intercept Soviet ships heading for Cuba, which were suspected of transporting strategic missiles. This the Soviet Union considered unacceptable and described as a *"casus belli"*.

The world held its breath as it charted the advance of Russian and American ships across the sea.

Finally, the United Nations Secretary-General, U Thant, managed to resolve the crisis by proposing that neutral inspectors, agreed by both parties, would inspect the Soviet ships sailing across the Atlantic in order to certify that they carried neither rockets nor atomic bombs.

By successive eliminations, it was the ICRC in the end which was designated to carry out the inspection.

Although the task went well beyond the framework of its traditional mandate, the International Committee felt that it could not step aside when the future of mankind was at risk. It therefore agreed to appoint neutral inspectors, on condition that the three States directly concerned, the United States, the USSR and Cuba, would give their consent.

It had started to recruit the inspectors when the news broke that the Soviet ships had turned back.[7]

The crisis was over. The fact nevertheless remained that at a time when the Cold War was threatening to degenerate into nuclear disaster, it was the ICRC which was called upon as the only institution whose neutrality and impartiality were recognized by both Washington and Moscow.

From the fall of the Berlin wall to civil war in Bosnia-Herzegovina

The bipolar system produced by the Second World War collapsed with the fall of the Berlin Wall, followed by the break-up of the USSR.

Unfortunately, the end of the Cold War did not bring with it the general appeasement which had been hoped for.

The occupation of Kuwait and the subsequent Gulf War seriously threatened world stability. But even more so, the end of the Cold War unleashed a series of conflicts, which could not have occurred at the time when the two major powers kept control of their empires. In Yugoslavia, in the Caucasus and in Central Asia, long-repressed antagonisms broke out in a surge of hatred and violence.

[7] *Annual Report*, ICRC, Geneva, 1962, pp. 31-35.

Many older conflicts, such as wars of religion and ethnic confrontations, flared anew as the ideological varnish cracked, revealing endogenous causes which had previously been glossed over. Having lost the support of external backers, the belligerents tried to finance their wars by holding the populations to ransom and by joining forces with common-law criminals in major crime and drug trafficking operations.

Moreover, the Cold War had imposed a bipolar approach, regardless of the real causes of conflicts, since each of the opposing parties sought the support of one of the blocs. That external pressure has now disappeared, leading to a proliferation of parties and factions.

In some instances, structures of government have collapsed altogether. The breakdown of public services and the disintegration of the law enforcement authorities have given free rein to a myriad of clans and factions, while common crime has taken the place of political action. In these situations of total anarchy, humanitarian institutions seeking to help the needy population are ultimately held hostage to the self-seeking purposes of marauding groups.

As a result, the International Committee finds itself in a paradoxical situation: whereas it is much more widely accepted than ever before, it is faced with operational difficulties which all too often paralyse its efforts. Political leaders appeal to its services, but cannot guarantee the safety of its delegates or its convoys.

Despite these difficulties, ICRC operations have continued to grow, to an altogether unprecedented extent. The ICRC is engaged in more theatres of operation, is represented by more delegates and has distributed more relief than at any other time, even during the Second World War. The professional approach of its delegates is very widely respected and its diplomatic credibility is rated highly, as shown by the permanent observer status granted to it by the United Nations General Assembly on 16 October 1990. Its competence in the development of humanitarian law has also been fully recognized.

Paradoxically again, however, at the very time when the operational capacity and international credibility of the ICRC are stronger than ever, it is running into opposition within the Movement, as it did after the First World War and even more so after the Second. Long-shelved plans are being revived, such as placing the International Committee and the League under the tutelage of a National Societies Commission, or merging the ICRC and the Federation, or even simply doing away with the ICRC altogether. The division of duties and responsibilities, as confirmed by the

revised Statutes of 1986, is no longer respected. It is being proclaimed that the usefulness of the ICRC's role as a neutral intermediary has ceased, now that the Cold War has ended.

It would be naive to attribute these attacks entirely to envy, although that is clearly one of the factors involved.

The historian feels bound to point out that the ICRC's mandate, which is an outcome of history, has always been brought into question in times of upheaval. That happened in 1919 and even more so in 1945. We are now probably going through a further period of upheaval due to the end of the Cold War and the search for a new world equilibrium. History also shows that such attacks against the ICRC have seriously jeopardized the unity of the International Red Cross and Red Crescent Movement.

On the other hand, the current situation differs from former crises in one essential point, namely the fact that at the end of both the First and the Second World Wars, the Red Cross was without doubt the foremost international humanitarian organization: it was even practically the only one.

This is no longer so today and the Movement should understand that it cannot afford to indulge in domestic quarrels without undermining its international position. Other institutions have acquired a standard of professionalism and competence which would enable them to take over from a divided Movement, not to mention that intergovernmental organizations and many States are planning to conduct their own humanitarian operations.

It is therefore high time for the International Red Cross and Red Crescent Movement to recover its unity by respecting the complementary nature of the mandates of its component bodies, and to turn its attention resolutely towards dealing with the challenges of the future. This is something the world is all too sure to need.

François Bugnion, Arts graduate and Doctor of Political Science, entered the service of the ICRC in 1970. He served the institution in Israel and the occupied territories (1970-1972), in Bangladesh (1973-1974) and more briefly in Turkey and Cyprus (1974), Chad (1978), Viet Nam and Cambodia (1979). Since 1989, he has been Deputy Director of the ICRC Department for Principles, Law and Relations with the International Red Cross and Red Crescent Movement. He is the author of: *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (ICRC, Geneva, 1994).

ACCESSION TO THE PROTOCOLS BY THE REPUBLIC OF HONDURAS

The Republic of Honduras acceded on 16 February 1995 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Honduras on 16 August 1995.

This accession brings to **136** the number of States party to Protocol I and to **126** those party to Protocol II.

DECLARATION BY THE SLOVAK REPUBLIC

On 13 March 1995 the Slovak Republic made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission.

In accordance with Article 90, paragraph 2 (*a*), of Protocol I of 1977 additional to the Geneva Conventions of 1949, the Slovak Republic declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Slovak Republic is the **forty-third** State to make the declaration regarding the Fact-Finding Commission.

ACCESSION TO THE PROTOCOLS BY THE REPUBLIC OF CAPE VERDE

The Republic of Cape Verde acceded on 16 March 1995 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Cape Verde on 16 September 1995.

This accession brings to **137** the number of States party to Protocol I and to **127** those party to Protocol II.

DECLARATION BY THE REPUBLIC OF CAPE VERDE

On 16 March 1995 the Republic of Cape Verde made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission.

In accordance with Article 90, paragraph 2 (*a*), of Protocol I of 1977 additional to the Geneva Conventions of 1949, the Republic of Cape Verde declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Republic of Cape Verde is the **forty-fourth** State to make the declaration regarding the Fact-Finding Commission.

THE NAZI DOCTORS AND THE NUREMBERG CODE

Medical experiments on human beings

In a work entitled *The Nazi Doctors and the Nuremberg Code — Human Rights in Human Experimentation*,[1] George J. Annas, Professor of Health Law and Director of the Law, Medicine and Ethics Program at Boston University Schools of Medicine and Public Health, and Michael A. Grodin, Associate Professor of Philosophy, Medicine and Public Health, and Associate Director of the Law, Medicine and Ethics Program at Boston University Schools of Medicine and Public Health, retrace the role of Nazi doctors in medical experiments on human beings, particularly on detainees in concentration camps. Using American and German archives, they describe the trial of twenty of these doctors and three of their accomplices who appeared before the American Military Tribunal I in Nuremberg between October 1946 and August 1947.

In their study, the authors observe that the experiments carried out by the Nazi doctors stemmed from the practices of nationalist physicians who, even before the 1920s, belonged to the racial hygiene movement. In 1929 the National Socialist Physicians' League was founded to coordinate Nazi medical policy and, by January 1933, nearly 3,000 doctors, i.e. 6 per cent of the profession, had joined the League. Its policy concentrated mainly on three areas:

— the "Sterilization Law", which allowed the forcible sterilization of anyone suffering from "genetically determined" illnesses, including feeble-mindedness, schizophrenia, epilepsy, genetic blindness, deafness and alcoholism;

— the Nuremberg Laws, which excluded Jews from citzenship and prohibited marriage or sexual relations between Jews and non-Jews;

— euthanasia programmes for patients judged to be incurable.

The authors make a point of showing the extent to which the medical community was involved in the Nazi programme of human experimentation,

[1] George J. Annas and Michael A. Grodin, *The Nazi Doctors and the Nuremberg Code — Human Rights in Human Experimentation*, Oxford University Press, Oxford, 1992, 371 pp. plus lists, a diagram and photographs.

saying that the 23 accused who appeared before the Nuremberg Tribunal represented only a small percentage of the perpetrators — doctors and non-doctors — of experiments on human beings.

During the Doctors' Trial in Nuremberg, the prosecution pointed out that there had been hundreds of thousands of victims and, drawing on original documents from the archives of the concentration camps and on testimony given, it came to the conclusion that at least 11 types of experiments had been carried out, notably into the effects of high altitude and low pressure, freezing, malaria, bone regeneration and transplantation, sterilization and typhus.

The Doctors' Trial led to the establishment of the Nuremberg Code. It sets out the basic conditions and ethical standards under which experiments may be carried out on human beings. In the latter part of their book, the authors concentrated on the influence of the Nuremberg Principles on the subsequent development of international law, American law and modern medical research.

It is of interest to recall that after the Doctors' Trial, and in the absence of diplomatic relations between the Federal Republic of Germany, on the one hand, and Poland and Hungary on the other, the ICRC acted as a neutral intermediary between these countries from 1960 to 1970 on behalf of nationals of the latter two who had been subjected to what were designated as pseudo-medical experiments in the Nazi concentration camps and received financial compensation from the Federal Republic, via the ICRC, to help ease their plight.

From 1961 to 1972, a Neutral Commission appointed by the ICRC awarded 1,701 survivors of pseudo-medical experiments assistance totalling DM 50,845,000. However, in 1972, numerous requests from Polish victims had not yet been examined by the Neutral Commission. In November 1972, a compensation agreement was signed at ICRC headquarters between the Government of the Federal Republic of Germany and the Government of the Polish People's Republic for the Polish victims of pseudo-medical experiments carried out in Nazi concentration camps during the Second World War. In accordance with this agreement, the Government of the Federal Republic of Germany paid DM 100 million to the Polish Government to be allocated to the victims of pseudo-medical experiments who had not yet received any financial aid.[2]

Françoise Perret

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[2] In this connection, see "On behalf of victims of pseudo-medical experiments — Red Cross action" in *IRRC*, No. 142, January 1973, pp. 3-21.

WAR AND LAW SINCE 1945

The British historian Geoffrey Best has written a work that affords new insights into war and its limits as defined by the law. In *War and Law Since 1945** he undertakes to show the relationship between civilization and war. His basic premiss is that civilization always seeks to impose restrictions on the violence of war in order to reduce to a minimum the resulting loss of life and destruction of civilian property. The author is interested above all in whether civilization succeeds in this: do the restrictions the law lays down actually exert a moderating influence on those who wage war, and do they make military operations less cruel and provide broad protection for those affected by the fighting? In short, to what extent are the rules of international humanitarian law actually reflected in practice?

This is not the first time that Geoffrey Best has ventured into this legal domain. In *Humanity and Warfare — the Modern History of the International Law of Armed Conflicts* (London 1980) he laid the basis for a more comprehensive view of international humanitarian law than can be accomplished by means of a purely rule-oriented analysis of existing texts. Taking the European Enlightenment as his starting point, Best told the recent history of humanitarian law. In his new 400-page book he continues his study of that law's place in history and explains the latest developments, casting new light on the provisions applicable today. The many cross-references concerning both military and general history as well as an incredible wealth of factual material make this book an interesting read. Best describes himself as a historian who specializes in the law of war and endeavours to explain things as clearly as possible. He explicitly disclaims the mantle of the lawyer, to whom he ascribes a limited and one-sided view, and reaches out to the non-specialist, more general reader to describe international humanitarian law as it really is.

Part I of the book sets the stage for his account of modern humanitarian law by giving a historical analysis of the ideas from which it stemmed. Best begins with Jean-Jacques Rousseau and ends with the war-crimes trials in Nuremberg and Tokyo. For example, he reminds his readers that the international humanitarian law applicable today derives almost exclusively from European and Mediterranean sources. Despite its regional origin, the well-developed European system of humanitarian law has spread world-wide, probably because the ideas and principles on which it is based do not seem alien to non-European cultures and civilizations but contain solutions to problems that arise in like or at least similar fashion everywhere, namely how to limit the violence of war so that survival is ensured.

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* Geoffrey Best, *War and Law Since 1945*, Clarendon Press, Oxford, 1994, 434 pp.

Most of the book is devoted to the law's development since the Second World War: Part II, entitled "Reconstruction of the Laws of War, 1945-1950", is centred on the making of the four Geneva Conventions of 1949, whilst Part III, "Law and Armed Conflict since 1950", gives particular attention to the two Additional Protocols of 1977. For the law, the end of the Second World War prompted many changes, and the author endeavours to help us see the pattern that emerged. The founding of the United Nations, the adoption of its Charter as the basis for international law, the hearing finally given to demands for effective international protection of human rights, the war-crimes tribunals in Nuremberg and Tokyo and the recasting of international humanitarian law in the 1949 Geneva Conventions are but the most important elements in that pattern. It would be foolish to view these developments in isolation and the author gives an absorbing account of how each influenced the other. Best makes the relationship between protection of human rights and the rules of international humanitarian law particularly clear: he speaks of an enriching alliance between the two systems, with both aspiring to protect the human being *in extremis*. As we know, Article 3 common to all four Geneva Conventions unmistakably enshrined and convincingly legitimized this alliance. As a counter-example Best cites Article 5 of the Fourth Geneva Convention, which disregards the most fundamental human rights demands by allowing protected persons to be held *incommunicado* in occupied territory, and this despite the then very recent tragic experience of such unacceptable practices during the Second World War. The reader learns something of the background to this aberration by the lawmakers of 1949.

The table of contents for the two main sections of the book reads like a list of the legal issues that arise time and again when it comes to actually implementing international humanitarian law. The general reader will learn a great deal, not only about the rules themselves but also about the practical problems involved in their transposition into legal reality. The author has assembled much factual material from the Second World War and also from the 1990-91 Gulf War. Experts in international humanitarian law will find much stimulating discussion but nothing that will add substantially to their understanding of the Geneva Conventions or their Additional Protocols. Best largely shares the prevailing views on the principal issues raised in connection with these six humanitarian treaties and with the rules of customary law. But the book is enlightening and at times very impressive, for instance the author's remarks on the prohibition of perfidy — a perfect example of the insights that can be gained from an analysis penned by someone who is "more than a lawyer".

The international law expert may nevertheless wonder at times whether the often proclaimed broader approach really does yield so many new insights. He then also wonders whether sometimes too much is being 'understood', thereby merely justifying the *status quo*. An example is the disappointing commentary on the 1980 Weapons Convention, which can hardly be described as anything even half-way approaching an adequate remedy for such abominable practices as the use of anti-personnel mines. He may also be startled by the somewhat

superficial treatment, and ultimately negative assessment, of 1977 Additional Protocol II (on non-international armed conflict). Has Best been deserted by his sense of political and historical perspective when he judges a text to be unsatisfactory merely because it lays down too few specific rules? In Protocol II, has not political pressure brought into being a humanitarian treaty adopted by consensus and which, precisely because of its simplicity, has some chance of being complied with by the parties to civil war?

Geoffrey Best's new book gives much food for thought to anyone interested in humanitarian law. It is well worth reading.

Hans-Peter Gasser

THE GULF CRISIS

*From prohibition of the use of force to its authorization**

Mr Sayegh's work is based on the thesis that he wrote for his doctorate in law soon after the second Gulf War. It was devoted not to the "war" but to "crisis" — something that may seem surprising to jurists unaccustomed to considering such concepts. The author has nevertheless done justice to his subject, aided by his knowledge of Arabic, French and English, as can be seen from the bibliography and the list of sources consulted. The study is intended to "help explore the development of the use of force and the changes that this has brought about in the United Nations system" (p. 26).

The chronology placed in the early pages of the study (pp. 16-19), even before the introduction, shows us the orientation of the author's research, which is confined to the "crisis" that lasted from 2 August 1990 (date of the invasion of Kuwait) to 16/17 January 1991 (beginning of the war against Iraq).

As we know, this was a period of unprecedented activity on the part of the United Nations Security Council, which adopted a series of resolutions, the first (resolution 660 of 2 August 1990) condemning the invasion and the last (resolution 678 of 29 November 1990) authorizing the use of "all necessary means" to implement the previous resolutions.

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* Selim Sayegh, *La crise du Golfe: De l'interdiction à l'autorisation du recours à la force*, Librairie Générale de Droit et de Jurisprudence, Paris, 1993, 544 pp.

To explain and analyse the "crisis" as a whole, Mr Sayegh looks at the history of the complex relations between Iraq and Kuwait, identifying the regional and international considerations involved. The first part of the book (pp. 31-275) sets out the basic elements of this history, going back to the 18th century and thus enabling the reader to measure the full significance of the August 1990 invasion, the various reactions which it triggered and the main arguments put forward by Iraq to justify its action against Kuwait (historic rights, economic aggression and assistance to a newly installed and friendly Kuwaiti government). According to the author, these arguments have no legal basis. Since the way the crisis developed cannot be explained by legal considerations alone, other factors must be cited to help the observer understand the reactions of Washington and London in particular, whose economic, political and strategic interests in the Gulf were affected and who immediately acted on the basis of their alliances, in addition to the action taken within the United Nations system. Despite the differences that exist between the former type of action and the latter, the two can be reconciled under Chapter VIII of the Charter itself.

The author divides the crisis into three stages: the first marked by resolution 660, the second by resolutions 661, 665, 666, 667 and 670 and the third by resolution 678. Despite a certain "conciliatory dimension" in resolution 660, the escalation option prevailed, beginning with economic coercion (resolution 661 of 6 August decreeing the embargo) before proceeding to military coercion (resolution 665 of 25 August authorizing the blockade and particularly the above-mentioned resolution 678).

These two forms of coercion are examined in the second part of the study, entitled "The developing crisis -- gradual legalization". The author analyses resolutions 661, 665 and 678, but also considers other texts, such as Articles 42 and 51 of the United Nations Charter and Security Council resolutions 664, 667 and 674. In noting certain similarities between resolutions 665 and 678, Mr Sayegh observes that by adopting the latter text, "the Security Council gradually relinquished its essential role of maintaining peace and security, by delegating its authority to States" (p. 492) and by giving the coalition "an unlimited mandate to implement resolution 660 and the subsequent resolutions" (p. 496). This is the inevitable consequence of the fusion between the centralized reaction as expressed by the Security Council and the decentralized reaction orchestrated by Washington. Given the author's decision to confine his study to the "crisis", the book ends with an interesting chapter on resolution 678 (pp. 475-502), in which he states that in authorizing the use of force the Security Council acted on the basis of neither Chapter VIII nor Articles 42 *et seq.* of the Charter. Moreover, resolution 678 goes beyond Article 51 on the right of self-defence, and the resulting situation is one of "self-help with support from one's allies", rather than of "self-defence with support from one's allies", a fact which casts doubt on its legitimacy under international law (p. 500). The political consequences of that resolution are examined briefly, and the author concludes by broaching issues connected with the dialectic between law and force, as well as other questions

both retrospective (end of the Cold War and its implications) and prospective (relations between Iraq and Kuwait).

It is nevertheless regrettable that the concept of "crisis", despite the fact that it draws on other disciplines such as history and political science and thereby enriches the work, has restricted the author to the area of *jus ad bellum* and has even led him to assert that resolution 678 also implied a kind of "frozen *jus in bello*" (p. 501). For under international law this "crisis" is the continuation of an international armed conflict which broke out on 2 August 1990 and made applicable the relevant provisions of *jus in bello*. From that date onward, the human consequences of the conflict were immense in Kuwait and Iraq and even elsewhere (the plight of the civilian population, internees, prisoners of war, foreign nationals, damage to property, effects of the embargo and the blockade, etc.).

Nevertheless, the abundant and very useful information provided, the analysis of the role of the Security Council and of some of its relevant resolutions, and the detailed account of the positions of the main protagonists in the "crisis" are presented with clarity and precision, and this makes Mr Sayegh's work a valuable tool for those interested in studying this major conflict, the implications of which will mark international relations for a long time to come, going far beyond the regional context or that of relations between two neighbouring Arab States.

Ameur Zemmali

DÉRIVES HUMANITAIRES: ÉTATS D'URGENCE ET DROIT D'INGÉRENCE

Humanitarian Action off Course: States of Emergency and the Right to Intervene

Now that the UNOSOM II troops have withdrawn from Somalia — amid quite harsh criticism from the press — the work *Dérives humanitaires: états d'urgence et droit d'ingérence*[1] is even more highly recommended owing to the clarity of its structure and arguments.

Published as the first issue of *Nouveaux Cahiers de l'IUED* by the Graduate Institute of Development Studies in Geneva, this book of approximately

[1] *Dérives humanitaries: états d'urgence and droit d'ingérence* (Humanitarian Action off Course: States of Emergency and the Right to Intervene), ed. Marie-Dominique Perrot, Institut Universitaire d'Etudes du développement, Geneva (Paris: PUF), April 1994, 163 pp. (in French only).

150 pages contains a multidisciplinary collection of essays on the subject of intervention — or interference[2] — on humanitarian grounds. The introduction, entitled *Propos,* with explanatory comments by Marie-Dominique Perrot, the editor of the publication, is followed by four sections: *Lignes* ("Main Themes"), *Controverses* ("Controversial Aspects"), *Paroles* ("Interviews") and *Points d'appui* ("Reference points").

Lignes begins with an essay by the jurist Bernhardt Graefrath, *Ingérence et droit international* ("Intervention and International Law"). Addressing the legal aspects of intervention, Graefrath points out that the problem of intervention on humanitarian grounds arises whenever it becomes necessary to breach the barrier of national sovereignty to help those who are in distress ... the scenarios are generally complex, with clear cut cases rare (p. 27).

In a very compact essay, *Origine de l'idéologie humanitaire et légitimité de l'ingérence* ("The origin of humanitarian ideology and the legitimacy of intervention"), Gilbert Rist questions the ideology of imposed intervention — interference — on humanitarian grounds. He is of the opinion that the values of "universalism", "individualism" and "survival of the fittest", as proclaimed in Enlightenment philosophy and in positivism, reflect an unmistakably Western ideology (pp. 36-7). Furthermore, by its association with standard Western thought, such an ideology "forms part...of the characteristic thinking of Western modernity which makes it possible to legitimize an unjustifiable action by claiming that it has indisputable value" (p. 45).

This same humanitarian "interference" — a contradiction in terms according to Rist — is the subject of Marie-Dominique Perrot's essay *L'ingérence humanitaire ou l'évocation d'un non-concept* ("Humanitarian 'interference', or the invoking of a non-concept"). She too is of the opinion that imposed intervention — interference — and humanitarian action each belong in totally different categories, concluding that, unless human lives are at stake, to link them is unacceptable to the social order because "everything happens as though the humanitarian powers wanted to share and promote sacrosanct values without taking the usual ritual precautions" (p. 61).

Raisons d'Etat et raison humanitaire ("Reasons of State and humanitarian rationale") is the title of Jacques Forster's essay, which goes directly to the point in addressing the problem of competition for humanitarian reasons, indicating the realities of such competition as well as the threat it poses to humanitarian action. Referring to the new role of the United Nations, Forster examines State humanitarianism, concluding that humanitarian action must neither be replaced by nor integrated into political action.

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[2] The customary English translation of the French term "*ingérence humanitaire*" is "humanitarian intervention". Literally, however, "*ingérence*" would be translated as "interference". As the book is largely concerned with this connotation, the terms "interference" or "imposed intervention" have been used where necessary to facilitate understanding of the thoughts expressed in this book review.

In his *Ingérence utile et manipulée* ("Useful and manipulated intervention"), François Piguet analyses the involvement in Somalia. Noting that aid always arrives too late, he asks whether, when all is said and done, "structural emergency constitutes an adequate response to the decay of socio-economic structures in certain countries and the resultant conflicts" (p. 95).

In the *Controverses* section, Fabrizio Sabelli voices his disagreement with Marie-Dominique Perrot in his essay *L'ingérence humanitaire entre religion et politique* ("Humanitarian intervention: between religion and politics"). In his opinion, in sanctioning the concept of (imposed) intervention an attempt is made "to gradually eliminate every obstacle — and the State is a sizeable one — which hinders economic power from realizing its goal of a worldwide uniformity of conscience and institutions" (p. 99).

Referring to the essay by Gilbert Rist, Christian Comeliau poses the question: *Le bon samaritain a-t-il un avenir?* ("Is there a future for good Samaritans?"). In view of "the tragic and terribly efficient consequences of modernity", he considers humanitarian action to be a necessity, "to avoid disruption of incalculable dimensions" (p. 102).

The *Paroles* section contains interviews with Paul Grossrieder, ICRC Deputy Director of Operations: *Le CICR face à l'ingérence humanitaire* ("The ICRC *vis-à-vis* (imposed) intervention on humanitarian grounds"); Hans Schellenberg, Section Head of Swiss Development Cooperation: *Entre non-ingérence et besoin d'aider: l'humanitaire d'Etat* ("Between non-interference and the need to provide aid: State humanitarianism"); Jean-Philippe Rapp, television news journalist for Télévision Suisse Romande: *L'ingérence humanitaire et les médias* ("Intervention on humanitarian grounds and the media"); and lastly, Yves Audéoud, Head of the Africa Department at Caritas Suisse: *Savoir ou ne pas savoir intervenir, le cas de la Somalie* ("The wisdom to intervene or not: the case of Somalia").

These interviews are indicative of the highly important role played by the media in interventions which could be classified as interference on humanitarian grounds. In addition, Grossrieder rightly points out that nowadays the problem is not so much that of going into a country but of taking action once one is there. In his opinion, the early warning system rarely prevents war. For Hans Schellenberg, (imposed) intervention — or interference — consists in providing aid where everyone else has already done so, consequently forgetting about other victims, while the contrary involves placing humanitarian principles before political considerations. Jean-Philippe Rapp draws attention, in passing, to "the highly conventional language used by (media) professionals who are often more intolerant that the general public" (p. 123). On the other hand, for Yves Audéoud, "humanitarian aid is a very practical concept, since it is a means of using emotions to the advantage of domestic political considerations" (p. 130).

The final section, *Points d'appui*, consists of an essay by Delphine Bordier, *Ingérence humanitaire: un débat* ("Humanitarian intervention: a debate"), which contains a carefully considered summary of the leading opinions expressed on

humanitarian intervention/interference. Observations by Mario Bettati, Bernard Kouchner, Cornelio Sommaruga, Jean-Christophe Rufin, Rony Braumann and others provide a highly useful overview for a debate that continues to generate ideas and opinions. Afterwards comes a bibliography, along with background information on the training and professional status of the contributors to this book. This is a welcome addition, the only criticism being that it has been placed at the end rather than along with the author's name at the beginning of each essay.

Readers may be surprised by the critical tone of these essays. This is, however, the purpose of the collection which, given the title *Enjeux* ("What is at stake"), seeks to demystify as well as highlight the workings of power "which at times have become unfamiliar to us". Consequently, the authors of this brief collection offer us a lesson in humility, their response in keeping with a properly scientific approach to the subject.

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